

3-15-1988

## Hearing on Campaign Finance Practices of Citywide and Statewide Officials

New York State Commission on Government Integrity

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# **DOCUMENT NO. 5**

## **HEARING ON CAMPAIGN FINANCE PRACTICES OF CITYWIDE AND STATEWIDE OFFICIALS [MARCH 15, 1988]**

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STATE OF NEW YORK

COMMISSION OF GOVERNMENT INTEGRITY

-----x  
  
HEARING ON CAMPAIGN FINANCE PRACTICES  
OF CITYWIDE AND STATEWIDE OFFICIALS  
  
-----x

New York County  
Trial Lawyers Association  
14 Vesey Street  
New York, New York

March 15, 1988  
9:20 A.M.

B E F O R E:      JOHN D. FEERICK, CHAIRMAN

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## P A N E L:

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5

KEVIN J. O'BRIEN

6

RICHARD D. EMERY

7

PETER BIENSTOCK

8

PATRICIA M. HYNES

9

JAMES L. MAGAVERN

10

NICOLE A. GORDON

11

THOMAS J. SCHWARZ

12

JUDGE BERNARD S. MEYER

13

14

## ALSO PRESENT:

15

16

CONSTANCE CUSHMAN, ESQ.,

17

ALEXANDRA LOWE, ESQ.,

18

G. MICHAEL BELLINGER, ESQ.,

19

DONALD MOUSTED, ESQ.,

20

THOMAS McSHANE, ESQ.,

21

ROBIN SHANUS, ESQ.,

22

LAURIE LINTON, ESQ.,

23

24

25



1

2 EXAMINATION BY MS. LINTON:

3 Q. Good morning, Mr. Tenenini.

4 By whom are you currently employed?

5 A. The Office of General Services.

6 Q. For how long have you been at OGS?

7 A. Since June of '87.

8 Q. Where were you employed prior to that?

9 A. Prior to that, I was at the State

10 Board of Elections.

11 Q. For how long were you at the State

12 Board of Elections?

13 A. I believe approximately three and a  
14 half years.15 Q. And what position did you hold at the  
16 State Board?

17 A. When I left, associate accountant.

18 Q. And prior to that?

19 A. Senior accountant.

20 Q. You were in which division of the  
21 State Board?22 A. The Bureau of Election Law  
23 Enforcement, and I worked in the audit unit.24 Q. Mr. Tenenini, prior to starting to  
25 work at the State Board, were you at all familiar

1

2 with the various requirements of the State  
3 election law with respect to contribution  
4 limitations and financial disclosure statements?

5 A. No, I was not.

6 Q. Subsequently, have you become aware of  
7 such requirements?

8 A. Yes.

9 Q. How did you become aware of them?

10 A. When I got to the board, I grabbed the  
11 election law, and Article 14 within the election  
12 law, which was campaign receipts and  
13 expenditures, and reviewed it and became familiar  
14 with the provisions contained therein, and that's  
15 how I learned.

16 Q. During your tenure at the board, did  
17 you become familiar with the board's procedures  
18 for handling and processing of financial  
19 disclosure statements?

20 A. Yes, I did.

21 Q. In fact, were you responsible for  
22 certain of those procedures?

23 A. Yes, I was.

24 Q. What I would like to discuss with you  
25 is exactly what those procedures are for handling

1  
2 and processing such forms. When the board  
3 receives a financial disclosure statement, what  
4 essentially is the first step?

5 A. When we open a mailing, we have  
6 received a financial disclosure statement, it's  
7 stamped in as received, and a clerk will review  
8 the face of the statement, she will review the  
9 committee name or candidate name and then go to  
10 an active list and determine if it's an active  
11 candidate or a committee currently registered  
12 with the board. If it is, they make a note to  
13 reflect the actual number.

14 She will check the filing date to see  
15 which filing they are in fact filing, and she  
16 will look at the signature to determine whether  
17 the treasurer has signed it or not, even though  
18 that's not a requirement, if even though it's not  
19 a requirement, if someone other than the  
20 treasurer, if someone signs it a treasurer she  
21 ensures that that is in fact the treasurer of the  
22 committee.

23 Q. That's done by which department of the  
24 board?

25 A. The audit committee.

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2

3

Q. Is any other information done initially when the form is received by the board?

4

5

A. Not at that point. It's then passed on to the EDP units after it's been coded.

6

7

Q. What's the EDP unit?

A. Electronic data processing unit.

8

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Q. What do they do?

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A. They will keep the filling in as received, and a copy, two copies will be made of it, one which is sent to the public viewing, and the the other which is given back to the EDP group and one of their data entry machine operators would then key in the summary data on I believe it's pages 3 and 4 of the financial disclosure statement.

17

18

Q. Could you tell us what is included in the summary data of the statement?

19

20

A. Lines 1 through 7 are receipt and expenditure information on the form.

21

22

Q. That's total receipts and expenditures?

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A. Yes. And lines 8 through 14 is loan information, which is on the form, regarding loans received by the candidate or committee.

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CHAIRMAN FEERICK: Can I ask the witness just if you could just go a little slower in your testimony. I think it will help the reporter.

Q. Lines 15 through 21, liability or unpaid billing information on the form.

Q. Again that's total compilations?

A. Yes, this is all summary data and lines 22 through 24 are contribution, summary contribution information. Lines 25 through 31 are summary expenditure information.

Q. And this information is all input into the computer?

A. Into the computer at that time, as received, unaudited.

Q. But that's summary information, that does not include recordings of individual contributions or expenditures?

A. No.

Q. After this information is keyed into the computer by what you have called your EDP, what's the next step, what next happens to that form?

A. A computer report is generated which

1

2 lists any discrepancies on the reports, whether  
3 it be an addition or carry forward balances from  
4 previous reports. At that point, it is attached  
5 to the back of the report, the report is  
6 submitted to the audit committee for further  
7 financial review.

8

Q. Submitted to the audit units?

9

A. Yes.

10

Q. And what does the audit unit do with  
11 these reports?

12

A. They basically foot it, add the  
13 records, and add the schedule information, the  
14 detail information which is posted to the summary  
15 information on the report.

16

Q. When you say they add the information,  
17 you're saying they essentially check the  
18 arithmetic?

19

A. Yes, the arithmetic.

20

Q. And this is done by your audit  
21 department. Who is in your audit department who  
22 does this?

23

A. We have a senior clerk, two account  
24 clerks, and when I was there, we had a senior  
25 accountant and I was the associate accountant.

1

2

Q. You said an account clerk. Are these accountants?

3

4

A. No, they are account clerks.

5

Q. Now, this audit that they perform --

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7

A. Was a financial review, as opposed to an audit. It was a desk audit. No independent verification.

8

9

Q. What is done with this desk audit?

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A. It's simply as you said adding the arithmetic on each schedule and insuring that the total is accurate. We did some other -- we insured compliance with some of the other provision within article 14, such as the thousand dollars. If there was a contribution in excess of a thousand dollars, made between the last pregeneral or preprimary filing and prior to election date, if we found that on the 27 date post general or ten-day post primary report, I would bring that to the attention of my supervisor.

22

23

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Q. So now you stated that you have information keyed into the computer and you have this desk audit which checks the arithmetic and the facial correctness of the forms.

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Is that done with that desk audit, at this point?

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A. Then we would generate, we would have the computer generate a letter which would go back to the candidate or committee requesting correction of the errors or discrepancies.

8

9

Q. And if you did not receive corrections?

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A. If we did not receive corrections, we gave them a two-week grace period, then we would send a follow-up letter to them, asking them again for those corrections.

14

15

Q. What if you still did not receive corrections?

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A. At that point I had compiled a list, which I provided to Mr. Wallace, Thomas Wallace, the executive director of the agency of candidates and committees that had not answered our correspondence and provided us with the appropriate documentation.

22

Q. And what happened with that list?

23

24

25

A. Well, I was told by Mr. Wallace that we were not going to proceed any further with it. That we could -- because I had requested



1  
2 that we obtain a court order, which the law  
3 allows us to do, the election law allows us to do  
4 to maintain that these candidates or treasurers  
5 of committees file the appropriate documentation.

6 Q. I think you made a state to the effect  
7 that there was no independent verification done  
8 of the information received on the disclosure  
9 statements; is that correct?

10 A. Yes. We did never did field audits  
11 except upon complaint.

12 Q. Did you ever make a recommendation  
13 that such field audits be conducted?

14 A. Yes, I did.

15 Q. What happened?

16 A. I was told by my supervisor that we  
17 didn't do field audits unless there was a  
18 complaint.

19 Q. Who was your field supervisor?

20 A. Frank D. Polsinello.

21 Q. Mr. Tenenini, what else is done with  
22 the information received on the financial  
23 disclosure statements, for example, with respect  
24 to corporate contributions?

25 A. We maintained an index card file of

1

2 corporate contributions by corporation, from the  
3 financial disclosure statements, the schedule  
4 2-A, which is the contribution schedule.

5 Q. Could you describe that index card  
6 file for us?

7 A. It was alphabetical listing of  
8 corporations and all contributions received in  
9 calendar year. Naturally we only had access to  
10 State committees, and so we could only get  
11 information from the states that were required to  
12 be filed with us.

13 Q. So in other words, what you are saying  
14 is, for example, you could capture information  
15 with respect to corporations that filed -- that  
16 made contributions to committees that filed with  
17 the State?

18 A. With the State Board, yes.

19 Q. But if someone had made a contribution  
20 to one committee that filed with the State and to  
21 another committee which did not file with the  
22 State, you would not have that information?

23 A. No, I would not unless there was a  
24 complaint to that effect, then we would have  
25 obtained them from the appropriate Board of

1

2 Elections.

3

4

Q. Mr. Tenenini, who was responsible for compiling these index cards?

5

6

A. The account clerks to monitored the financial reviews.

7

8

Q. Was it this information ever put into the computer?

9

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11

12

A. No, it was not. They were developing a computer program when I was in the process of leaving the agency. I don't know what the status of that is.

13

14

15

Q. What would happen in cases where you did find that a corporation had made a contribution in excess of its limits?

16

17

A. I would report that contribution or those contributions to my supervisor.

18

19

Q. Who you stated was Mr. Polsinello?

A. Yes.

20

21

Q. And what happened happen after that, do you know?

22

23

A. I was never told of anything that happened after that.

24

25

Q. You have told what the board does with respect to corporate contributions, does the

1

2 board do any sort of analysis of individual  
3 contributions?

4

A. No. Not unless something jumped off  
5 the page. If it was one contribution that we  
6 knew was over the limit, because we had the  
7 individual limits for each office. If there was  
8 one contribution made that was in excess of the  
9 limit, then I would verify that and report the  
10 various corporate contributions to my supervisor.

11

Q. But for example, if one were to  
12 inquire of the board how much a particular  
13 individual gave to a specific candidate or  
14 committee or how much that individual gave in the  
15 aggregate, over the course of a certain period of  
16 time, would the board be able to answer that  
17 question?

18

A. Not immediately, no.

19

Q. Did you do anything with respect to  
20 information about contributions from  
21 partnerships?

22

A. Contributions from partnerships same  
23 thing, it's a contribution from an individual,  
24 because a contribution from a partnership has to  
25 be prorated among the individual partners.

1

2 Usually in accordance with their profit loss  
3 ratio, in a partnership.

4

5 Q. Did you check to make sure that  
6 partnership contributions were properly  
7 allocated?

8

9 A. No, we did not.

10

11 Q. Mr. Tenenini, to what extent does the  
12 State Board communicate or share its information  
13 with the various local Boards of Elections?

14

15 A. Upon request.

16

17 Q. But is this any sort of practice of  
18 sharing information?

19

20 A. Regarding financial disclosure?

21

22 Q. Correct.

23

24 A. Not that I am aware of. We provide  
25 them with financial forms when they need them.

26

27 Q. Now, you have testified about the  
28 various procedures in place at the State Board  
29 with respect to, for example, corporate  
30 contribution. Do you know whether the local  
31 Boards of Elections have similar systems in  
32 place?

33

34 A. No, I am not aware if they do or they  
35 don't, I can't say.

1

2 Q. Mr. Tenenini, are you at all familiar  
3 with the computer system at the State Board of  
4 Elections?

5 A. Yes.

6 Q. Do you know was there ever an effort  
7 made by the board to computerize all the  
8 information captured on the financial disclosure  
9 statements?

10 A. I know there was an effort to key  
11 individual contributions into the computer many  
12 years ago, I believe very close to after  
13 inception of the board in 1784.

14 Q. Do you know what happened with that  
15 information?

16 A. This is, I can only say what I heard.

17 Q. Tell us what you know.

18 A. What I heard was they programmed it  
19 in, they keyed the information in, and they  
20 didn't like sanc of the names coming out as far  
21 as contributions from excess individuals, so they  
22 stopped the practice and it was stopped.

23 Q. Mr. Tenenini, during your tenure at  
24 the board, did you make any suggestions or  
25 recommendations for any changes or innovations

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2 with respect to how information is recorded by  
3 the board or made accessible to the public?

4

A. Yes, I did.

5

6

Q. Could you please describe those for  
us?

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A. Well, we had one of the staff on the  
region, Jim Lane, he was a liaison with the EDP  
section, and he developed some programs which  
would elicit some good information from the  
computer regarding contributions to different  
offices, such as Senate, and Assembly, and those  
offices, along the party lines, Democratic and  
Republican.

15

Q. When was this done?

16

17

A. This was done, I believe in, I would  
guess June of '86.

18

Q. And what happened to this information?

19

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25

A. It was presented to Mr. Polsinello,  
saying that this might be useful information to  
provide to the public. It also provided  
incumbent information, contributions received by  
incumbent as opposed to the individuals running  
against them. And nothing, from what -- to the  
best of my knowledge, nothing was ever done with

1

2 that information, as far as disseminating it to  
3 the public.

4

MS. LINTON: Thank you very much,  
5 Mr. Chairman.

6

CHAIRMAN FEERICK: Thank you very  
7 much.

8

(The witness left the witness stand.)

9

CHAIRMAN FEERICK: Mr. Tenenini, could  
10 you return for a few questions.

11

(The witness returned to the witness  
12 stand.)

13

CHAIRMAN FEERICK: I recognize  
14 Commissioner Emery.

15

MR. EMERY: I was going to defer to  
16 Commissioner Magavern.

17

MR. MAGAVERN: I would like to ask  
18 you, Mr. Tenenini, if you will, if you can  
19 elaborate a bit on two incidents you referred to  
20 about in the middle of your testimony in which in  
21 one case you had requested a court order, and  
22 Mr. Wallace had told you that you were not to go  
23 further I think, and the other case you had  
24 suggested a field audit, and Mr. Polsinello had  
25 said that there would be none unless there was a



1

2 complaint.

3

4 If I have got that right, I wonder if  
5 you could more fully describe each incident, what  
6 your objective was, and why you made the request,  
7 and a little bit more about how you were turned  
8 down at each request.

9

10 THE WITNESS: In the first case, when  
11 we sent these letters out, we would give them two  
12 weeks from the date of the receipt of the letter  
13 to respond to us and provide us with the  
14 necessary corrections. And it wasn't just  
15 financial disclosure statements.

16

17 If there was discrepancies within a  
18 registration statement, a committee designation  
19 of treasurer and depository, which was also a  
20 required filing of the board, if that was either  
21 not filed or filed with errors on it, we would  
22 send letters on that too.

23

24 If after two weeks we gave them a  
25 little bit of a grace period too. We would then  
26 send a follow-up letter if we had not received a  
27 response. And then we give them another month.  
28 If we still hadn't received a response to the  
29 follow-up letter, I then compiled a list of those

1  
2 candidates and committees that had not provided  
3 us with the necessary information for accurate  
4 filings.

5 And I did present to Mr. Wallace, and  
6 I said, you know, it's either within article 16  
7 or 17 where we have the right to obtain a court  
8 order to compel someone to file accurately. I  
9 said I think we should utilize that section and  
10 obtain court orders against each of these  
11 candidates or committees.

12 And I was told that we weren't going  
13 to do that because the timing effort that would  
14 be required for us to do that would not be worth  
15 the information we would be getting back, from  
16 the candidates and committees.

17 MR. MAGAVERN: In your own view, what  
18 kind of information might you have got back had  
19 you pursued that?

20 THE WITNESS: Well, what we might have  
21 gotten back in cases where they didn't file the  
22 registration statement, we had no real idea of  
23 who the treasurer of the committee was and who  
24 the depository of the committee was. We couldn't  
25 subpoena the bank record to do an audit. If

1

2 there was a complaint made and we needed to do an  
3 audit, without a registration statement we don't  
4 know who the bank is.

5

6 MR. MAGAVERN: Could you take the next  
incident then please.

7

THE WITNESS: Okay. What was it?

8

9 MR. MAGAVERN: It was a case in which  
10 Mr. Polsinello I believe told you that you could  
11 not pursue a field audit unless there was a  
complaint.

12

13 THE WITNESS: There were various  
14 disclosure statements that upon financial review  
15 there was numerous discrepancies within those  
statements.

16

17 As an auditor that led me to believe  
18 that there might be some problems with the data  
19 that was used to post this information to the  
20 original book as records that were used to post  
21 this information to the financial disclosure  
22 statements. Based on that, pursuant that I  
23 requested that a field audit be done of these  
committees, in writing.

24

25 MR. MAGAVERN: What would the  
objectives of that field audit have been, what

1  
2 kind of information would you try to develop and  
3 what would be the significance of that  
4 information?

5 THE WITNESS: What we would try to  
6 obtain is the original books and records of the  
7 individual contributions to see that all  
8 contributions that were in fact received by the  
9 committee were identified on the financial  
10 disclosure statement, and also expenditures made  
11 by the committee were in fact identified on the  
12 financial disclosure statements.

13 Through examination of them, via desk  
14 audit, I was led to believe that there may be  
15 some missing information.

16 MR. MAGAVERN: If we could go to the  
17 very last incident you described toward the end  
18 of your testimony, in which someone in the board  
19 had developed a program that would generate  
20 information in the Senate and Assembly, you said  
21 this had been presented to Mr. Polsinello and  
22 nothing had been done.

23 First what kind of information would  
24 have been generated and what would have been its  
25 significance?

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THE WITNESS: What was generated was, for instance, within the Senate we would have had for Republicans the amount of contributions received for the 1986 general election. That information would have come from the 32 day pregeneral, 11 day pregeneral, and 27 day post general report.

He also had something in place where he could identify incumbents and show how much he they received as opposed to their respective candidates that were running against them. And we did the same thing for the Assembly.

MR. MAGAVERN: This would have generated total contributions received, or would it have broken it down among contributors?

THE WITNESS: No, it would have been summary date, because we didn't have the individual contributors in our computer system.

MR. MAGAVERN: Then you testified that nothing was done because somebody didn't like the names that were coming out.

Could you explain that more fully, please?

THE WITNESS: That was a different

1  
2 situation. That was the individual contribution  
3 when they were -- when a program was generated  
4 for those, I think that was about ten years ago,  
5 and the information was put into the computer,  
6 all I heard was that they didn't like some of the  
7 names that were coming out of the computer, as  
8 far as excess contributions, so they scrapped the  
9 project at that point.

10 MR. MAGAVERN: Meaning names of  
11 contributors?

12 THE WITNESS: Making excess  
13 contributions, yes.

14 CHAIRMAN FEERICK: Commissioner  
15 Emery.

16 MR. EMERY: Just a couple of  
17 questions. I believe you testified that you  
18 personally made an effort to create a vehicle by  
19 which you could distribute information that was  
20 consolidated from filings to the public; is that  
21 right.

22 THE WITNESS: Um.

23 MR. EMERY: What kind of an initiative  
24 did you take in that regard, if you could explain  
25 it, I didn't quite understand it when you

1  
2 testified.

3 THE WITNESS: What we did was, given  
4 what we had keyed into the computer, we  
5 manipulated that data to put it in a format that  
6 we would have thought would have been useful  
7 information that to provide to the public so they  
8 can make a decision on election day, or to use it  
9 for --

10 MR. EMERY: What kind of information?

11 THE WITNESS: As I stated earlier,  
12 contributions received by an Assembly candidate,  
13 whether it be a Democrat or Republican. The  
14 incumbent as opposed to the candidate running  
15 against him.

16 MR. EMERY: And what happened to that  
17 initiative?

18 THE WITNESS: From what Jim Lane had  
19 told me when it was presented to Mr. Polsinello,  
20 Mr. Polsinello brought him in his office and said  
21 the Commissioner didn't want this type of data  
22 being disseminated to the public, and that it  
23 wouldn't be disseminated to the public  
24 basically.

25 MR. EMERY: Now, is there any

1

2 simplified data, if I can call it that, data that  
3 ordinary layperson can understand and that's  
4 essentially put out in a form that is accessible  
5 to either the press or to other interested  
6 parties, people who were interested in campaign  
7 spending, is there any such data put out on a  
8 regular basis by the State election board?

9

THE WITNESS: No.

10

MR. EMERY: Do you know the reason for  
11 that?

12

THE WITNESS: Well, part of this  
13 initiative that we took, it was just refused and  
14 from what I was told, the commissioners didn't  
15 want that type of data leaving the agency. They  
16 wanted the press to come in and view statements  
17 and draw their own conclusions from their view of  
18 the financial disclosure statements in our public  
19 viewing area.

20

MR. EMERY: How long did you work  
21 there?

22

THE WITNESS: Three and a half years.

23

MR. EMERY: Do you have an opinion as  
24 to why these initiatives to simplify matters and  
25 disseminate information were not provided to the



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2 public and the press?

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THE WITNESS: I guess I have an opinion on it, yeah. That's the reason, basically, I left the agency. It seemed like the commissioners didn't want anything new happening or anything innovative happening within the board. They just wanted to keep things nice and quite, and not distribute that type of information which could lead to questions, and potential problems, I guess, in dealing with the media.

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MR. EMERY: In your opinion, were those actions that caused you to leave the board and then caused this situation of not disseminating simplified information to the public the result of political connections that people had at the top of that agency?

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22

THE WITNESS: That's very likely.

23

24

25

MR. EMERY: And I take it that that agency is overseen by certain committees, both in the Senate and the Assembly.

THE WITNESS: Yes.

MR. EMERY: Are there close ties between those committees and the Senate and

1  
2 Assembly and the agency?

3 THE WITNESS: Yes.

4 MR. EMERY: Thank you.

5 CHAIRMAN FEERICK: Thomas Schwarz,  
6 Commission special counsel.

7 EXAMINATION BY MR. SCHWARZ:

8 Q. Would you look at form 51 again that  
9 you have in front of you, in the blue book.

10 Could you tell me, is there any way in  
11 which I can tell as a member of the public or  
12 press how much money Mr. Donohue, who is the  
13 first name on the list, has given to this  
14 campaign in the State, or going to the Board of  
15 Elections?

16 A. There is no way you could tell that.  
17 You would have to go to each Board of Elections,  
18 each County Board of Elections, within the State  
19 and the State Board of Elections, and examine  
20 every filing that we have on file. If you wanted  
21 that information.

22 Q. And I would have to go to every county  
23 around the state, the State Board?

24 A. Yep.

25 Q. Every village board?

1

2 A. Well, most of the village filings were  
3 at the county.

4 Q. Every individual place?

5 A. Yes.

6 Q. And if Mr. Donohue were related to  
7 Mr. Doran, that they both worked in the same  
8 company, would there be any information at all  
9 within the State that would tell me that?

10 A. No, there wouldn't, because it's not  
11 required. Within the federal election campaign  
12 act, you are required to put your employer on the  
13 financial statement, but within the State, you  
14 are not. I believe it was even suggested before  
15 the board by someone from common costs that this  
16 be added to schedule 2-A, the employer  
17 information.

18 Q. As far as you know, at the time that  
19 you were at the State Board, did anybody  
20 promulgate a revised form that would require  
21 information as to employer?

22 A. I revised the financial disclosure  
23 statements. And I submitted them, I believe, in  
24 February of '85, a revision of the financial  
25 disclosure statements, which I believe initially

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did include employer information for each contributor.

Q. And what happened to that?

A. That financial disclosure statement still hasn't been given any consideration or reviewed.

MR. SCHWARZ: Thank you.

CHAIRMAN FEERICK: Thank you very much.

(The witness left the witness stand.)

CHAIRMAN FEERICK: The Commission calls its next witness, Thomas Wallace.

T H O M A S        W A L L A C E,

having been first duly sworn by The Chairman, was examined and testified as follows:

CHAIRMAN FEERICK: Recognize Commission staff director Peter Bienstock.

EXAMINATION BY MR. BIENSTOCK:

Q. Mr. Wallace, good morning.

A. Good morning.

Q. You have been the executive director of the New York State Board of Elections since its inception in 1974, isn't that right?

1

2 A. That's correct, sir.

3 Q. Could you tell us what you did  
4 immediately before that?5 A. I was the director of the elections  
6 bureau in the Department of State, since 1965,  
7 and when the State Board was created, bringing  
8 over in effect my operation from the Secretary of  
9 State's office, and the enforcement operations  
10 from the Attorney General, I was placed in  
11 charge, as executive director.12 Q. Now, I want to ask you some questions  
13 about the staffing and budget of your agency.  
14 Are the commissioners divided by party  
15 affiliation?

16 A. Yes, they are.

17 Q. Would you describe that to us?

18 A. Yes.

19 Q. Who the current Commission -- I am  
20 sorry.21 A. Two Republican commissioners, two  
22 Democratic commissioners. They are appointed by  
23 the governor upon recommendation of certain  
24 individuals. One Republican and one Democratic  
25 Commissioner are recommended by the respective

1

2 minority and majority leaders of the legislature,  
3 the other two are recommended by the State  
4 chairmen of the two political parties.

5 Q. Is the senior staff of the agency  
6 similarly divided?

7 A. The senior staff is not by statute,  
8 but by tradition, probably the top four people in  
9 the agency.

10 Q. Could you describe the current holders  
11 of that position, and identify their party  
12 affiliations?

13 A. I am the executive director, I am a  
14 Republican. The deputy executive director is a  
15 Democrat. The counsel in charge of enforcement  
16 is a Democrat, and our special counsel, which in  
17 effect operates as general counsel, is a  
18 Republican.

19 Q. Now, am I correct, why don't you tell  
20 me what the current budget, annual budget of the  
21 agency is?

22 A. It's approximately 2.1 million.

23 Q. Has that fluctuated over the years, to  
24 any significant degree?

25 A. No, it has not. Except to recognize

1

2 of course the increased costs such as personnel,  
3 not increase in the number of personnel. In fact  
4 our personnel has decreased. But the increased  
5 salaries over these many years.

6

Q. I was going to get to that. How many  
7 employees do you have currently?

8

A. I believe it's approximately 38.

9

Q. And is that lower than it has been?

10

A. Yes, it is.

11

Q. And what, during your tenure, has been  
12 the high point in terms of number of employees?

13

A. Very early after the inception of the  
14 board, I believe we had approximately 51  
15 employees.

16

Q. Now the 38, does that count the  
17 commissioners?

18

A. It does.

19

Q. And does it count the four members of  
20 the senior staff that you identified?

21

A. Yes, it does.

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Q. Now, in terms of mandate of the State  
23 Board, is it fair to say that the board and its  
24 staff are charged with enforcing the State  
25 election law, state-wide, in cooperation with

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local boards?

A. That's correct.

Q. And you are the person I take it who is in charge of each of the staff functions?

A. At the staff level, yes.

Q. And have been for almost 14 years?

A. That's correct.

Q. That includes election administration state-wide?

A. Yes, it does.

Q. And in cooperation with local boards?

A. The local boards have certain independent jurisdiction. We have direct jurisdiction for all those offices that cross county lines, and more or less indirect jurisdiction for the election process.

Q. Now, it's fair to say, is it not, that upstate there are many State legislative districts that cross county lines; is that correct?

A. That's correct.

Q. Now, it also includes investigations; is that right?

A. Yes. That is one of the other areas



1

2 of our responsibility.

3

4 Q. Now it's true, is it not, that the  
5 vast majority of those investigations are  
6 investigations that are initiated by the filing  
7 of complaints?

8

9 A. That's correct.

10

11 Q. And mostly in the area of the voting  
12 process?

13

14 A. Probably in relation to any other  
15 single area, yes.

16

17 Q. Now, your responsibilities for  
18 day-to-day administration also includes the  
19 collection of campaign financial disclosure  
20 statements, isn't that correct?

21

22 A. That's correct.

23

24 Q. And for that duty, I take it you  
25 assign five people currently?

26

27 A. We currently have a staff of five.  
28 One accountant position, and four clericals, two  
29 of which are paid out of temporary funds.

30

31 Q. Is it fair to say, Mr. Wallace, that  
32 your agency receives a vast amount of data  
33 concerning campaign contributions and  
34 expenditures?  
35

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2           A.       Yes, it is. We, in 1986, we filed  
3 approximately 8,000 financial reports, and that  
4 does not include the registration statements, the  
5 designation of treasurer and depository  
6 authorization statements, and the other forms,  
7 the other documents.

8           Q.       And is it also the fact, sir, that you  
9 do almost nothing to analyze that data?

10          A.       Analytically we do the desk audits  
11 that Mr. Tenenini mentioned. As far as I recall,  
12 an automated or mechanical statistical function,  
13 we do not.

14          Q.       And you don't compile statistics or  
15 publish statistics; is that correct?

16          A.       That's correct.

17          Q.       And you don't make the data available  
18 to the public or the press in any meaningful  
19 form; isn't that correct?

20          A.       I think in most meaningful form is  
21 probably the statement itself, which we do make  
22 available. Immediately after it is received,  
23 within 24 hours, it is photocopied, made  
24 available to the public, which has a great deal  
25 of interest, probably for more than they would the

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2 statistical information, but not to get into an  
3 argument, we do provide the document itself.

4 Q. You provide a duplicate of the data,  
5 of the filing?

6 A. That's correct.

7 Q. And you do no other analysis of the  
8 data on campaign contributions and expenditures?

9 A. Except for the desk audit, that's  
10 correct.

11 Q. And nothing even as basic, if I may  
12 say so, as the chart in the middle easel in front  
13 of you?

14 A. That's correct.

15 CHAIRMAN FEERICK: Would you identify  
16 the chart for the record, please?

17 MR. BIENSTOCK: I am sorry,  
18 Mr. Chairman, it's the pie chart, campaign  
19 contributions for state office, 1986.

20 Q. Now, I want to identify the category  
21 of candidate or committee for which you received  
22 disclosure statements. That includes the  
23 state-wide offices, candidates and incumbent?

24 A. Yes.

25 Q. And the members of the State

1

2     Legislature?

3             A.     That's correct.

4             Q.     Whether or not they are, their  
5     districts cross county lines?

6             A.     That's correct.

7             Q.     So that's all 211 members and races  
8     for the State Legislature?

9             A.     Yes.

10            Q.     And all of the Justices of the Supreme  
11     Court?

12            A.     That's correct.

13            Q.     And political party office where the  
14     jurisdictions cross county lines, as you  
15     mentioned?

16            A.     Right.

17            Q.     Am I correct that in even numbered  
18     years, there are approximately 1400 committees  
19     which are filing disclosure statements?20            A.     That would be a very good estimate,  
21     yes.22            Q.     Now, is it true that the desk audits  
23     that you have mentioned can pick up only errors  
24     which appear on the face of the filings, such as  
25     arithmetic errors?

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2           A.       That's correct, or overcontributions,  
3       which as Mr. Tenenini mentioned appear as a  
4       single entry.

5

6                   Also, one of the checks we do is make  
7       sure their ending balance of the preceding report  
8       is the same as their beginning balance of the  
9       next, so that no money gets lost in between  
10      reporting periods and fails to get reported.

10

11      Q.       But you can't detect, for example,  
12      whether a corporation has exceeded the \$5,000  
13      limit by making a contribution to a committee  
14      which doesn't have the responsibility of filing  
15      with the state agency; is that right?

15

16           A.       I think I can go farther than that and  
17      say we probably would not detect if it was filed  
18      with us, if they were all filed with us, but on  
19      different, different recipients on different  
20      reports in different time periods.

20

21      Q.       I see. So the card file that Mr.  
22      Tenenini mentioned is essentially useless?

22

23           A.       I beg your pardon, I am sorry, on the  
24      card file by doing it in that nature, yes. I  
25      thought you were referring to just examining the  
26      reports themselves.

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Q. Now, has the Board ever promulgated regulations to require corporations to attest to the fact that they were within the corporate limit for any particular year?

6

A. No, we have not.

7

Q. To go on, you can't detect --

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A. Excuse me, please. On that one, if I could a little bit more, you have got to remember one thing. The recipient of the report is the filer, not the contributor. So what mechanism would be employed to do as you suggest?

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14

Q. Well, there are certain requirements, are there not, of contributors?

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A. No. I mean, the recipient is the one that files the documents. What you would be suggesting is every corporation that makes a contribution, even a mother, mama and papa type of closed corporation, who makes one contribution, would they themselves file a document? I don't think that's very practical.

Q. Well, in any event, Mr. Wallace, you can't detect partnership contributions for which there has been no allocation among the partners, can you?

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A. Our procedure is that when a contribution comes in, identifying it as a partnership contribution, if they have not allocated it among the partners themselves, our audit staff is instructed to correspond and attempt to get that data.

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9

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Q. Is there any place on the form for a contributor or the committee to identify the contributor as a partnership?

11

12

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A. No. There is instructions, though.

Q. And how can the auditor tell whether something is a partnership?

14

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A. Normally you pick up by most of the time when a partnership contribution is given, the recipient will record it as such and such partnership.

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Q. Well, why don't I refer you then to the exhibits in the binder in front of you. Beginning with Exhibit 51, which is a disclosure statement of the Friends of Mario Cuomo Committee for the 1983-1984 period, and ask you whether you can determine which of the partnerships and what are the allocations on the first page, or literally, if I may say so, Mr. Wallace, any page

1  
2 of that document?

3 A. I believe that I would identify Weiss  
4 Blutrnick, Falcone & Miller as a partnership. I  
5 would identify Werner, Gialom, Bartow & Fiorello  
6 as a partnership. Wilson, Elser, Edelman &  
7 Dicker as a partnership.

8 Q. Would it be appropriate procedure if I  
9 were to tell you that we have been unable to find  
10 any calculation for any of those?

11 A. That is a shortcoming of our staff  
12 then, that is all I can say.

13 Q. Who would be identifying the  
14 partnerships?

15 A. The people who work in the audit  
16 section.

17 Q. And what is their title?

18 A. Mainly clerical. And as you have  
19 stated, four, four people.

20 Q. Well, I mean, just to be complete  
21 about it, there is a \$10,000 contribution on that  
22 page from Willkie Farr & Gallagher, and I don't  
23 mean to pick out any particular law firm --

24 A. I am sorry, I just looked at the first  
25 page, and I didn't identify that one. I would



1  
2 have picked it out, yes.

3 Q. Is it your testimony that you rely on  
4 a clerk to identify law firms or architecture  
5 firms or whatever they may be to be partnerships  
6 to require allocations which do not come in with  
7 the filing?

8 A. Mr. Bienstock, as you mentioned, we  
9 have four or five people. We must rely on that.  
10 We have no other amount.

11 If I may, just for a second, since  
12 you're raising these points, you mentioned that  
13 the fact that we do no statistical analysis, that  
14 we do not pick these things up. Yet you have  
15 seen our budgets. You are also in possession of  
16 a document which I provided some time ago,  
17 showing the number of times we have gone to the  
18 budget, we have asked them for additional  
19 assistance in the audit section, in the EDP  
20 operation. We have not been able to get it.

21 So what I am telling you is not what I  
22 say I am glad we are doing, or that I wanted to  
23 do, or that the State Board should be doing. I  
24 am saying that is what we are limited to doing.

25 So all my responses on what we do,

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2 what we don't do, I hope you will keep that in  
3 mind.

4 Q. I do, Mr. Wallace.

5 Has the board promulgated any  
6 regulation requiring committees which make  
7 filings to allocate partnership contributions to  
8 members of the partnership?

9 A. The recipient committee?

10 Q. Yes.

11 A. They are supposed to.

12 Q. Are there any regulations to that  
13 effect?

14 A. I cannot tell you for sure whether it  
15 is an actual regulation. It is in our  
16 instructional materials.

17 Q. Now, how long does the law state that  
18 you must keep campaign disclosure filings?

19 A. Five years.

20 Q. The law doesn't require you to dispose  
21 of them after five years, does it?

22 A. No, it does not.

23 Q. Yet until we or perhaps another  
24 investigative agency requested that you stop  
25 discarding the information after five years, you

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were doing so routinely, isn't that right?

A. That's correct.

Q. Have you approached the State archives to determine whether or not they would be interested in keeping that information for you?

A. It is all settled now. They will be. There was an agreement signed not too long ago. They will be keeping it.

Up until recently, we concluded -- not concluded, but there was no interest in old data, so that we would be storing data at a cost to the State of New York, where there was no interest. As soon as -- I mean, I would have no problem, I see no problem in retaining, even in our agency, as opposed to archives, I have absolutely no problem with that.

It is really no great burden on us whether it's kept in five cabinets for five years or ten years. I just had not, nothing had been brought to my attention either by the SIC or anyone else that this information was in fact of any kind of interest or importance, beyond the five years. Almost everyone was interested in a four-year cycle.

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Q. Do you keep the information for more than five years in any form?

4

A. No, we do not.

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Q. Now, have you tried from time to time to establish computer capacity for the financial disclosure statements?

8

9

A. We have been trying to establish computer capacity since we were formed in 1974.

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Q. And in a conversation with me back in December, did you refer to the history of those efforts as a disaster?

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A. I probably used that word, because it would be the word that would come closest to mind. We now feel we are on the right track. We have in our budget request for 1988-89 requested a supervisor of data processing, or director of data processing, to use the correct title.

19

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22

Up until this point, we have never had an administrative person or of an administrative level to be on staff and work with us on our data processing.

23

24

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Again, we have asked for one for many years. It was only I think approximately a year and a half ago that we were able to get our first

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2 programmer. So it's not for lack of want, it's  
3 for lack of resources.

4

Q. Did you have an experience with the  
5 Office of General Services that Mr. Daddario  
6 referred to?

7

A. Yes, we did. Back in probably the  
8 late '70s, I would say, through budget division,  
9 Office of General Services, there was an  
10 arrangement made whereby we would, and the word  
11 is rent, even though it's a state agency, we  
12 would rent time on the OGS computer. They in  
13 turn would provide us with programming  
14 assistance.

15

It worked to a minimal degree for  
16 about one year. OGS advised us then that they  
17 could not afford to provide us the manpower  
18 necessary to continue our operations, and budget  
19 filing at that time realized that the only way we  
20 were going to do it is have our in-house  
21 computer, which was the next step, and that was  
22 accomplished approximately in 1982.

23

Q. After all of those years of trying,  
24 it's fair to say, is it not, that the result of  
25 of all of that effort, that you're now capable of

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2 entering the data on the summary sheets?

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A. I believe the technology is there.

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There is absolutely no question about the

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technology is there. Also to include all the

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individual contributions. There is no problem

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with that. That's a very simplified technology,

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as far as that goes.

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The summary data we have been

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entering, I should say, though we have an

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additional hangup, and that is the problem with

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clean data. The only time the data is going to

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be meaningful is if it is clean data. We

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experience approximately 80 percent error rate in

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our financial reports.

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This means that communication -- this

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means, first of all, that it has to, a desk audit

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has to be done to identify the problem, get back,

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get it cleaned up, and then enter it. So you

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have that problem to overcome, as well as the

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computer entry which again I believe is rather

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simplistic. I don't think there is any great

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deal about it, requires people.

24

Q. Do you believe that the State Board

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has the authority to issue regulations requiring

1  
2 committees to file complete statements?

3 A. We, as a result -- the best way I can  
4 answer that is from what Mr. Tenenini said, and  
5 as a result of his discussion with me, we got  
6 together with the Council's office.

7 As you know, there is a provision  
8 where we may go into court and request a \$100  
9 penalty against people who fail to file. There  
10 is no such ability to get a penalty for  
11 incomplete filings. And what we have been  
12 finding is, in a very rare instance but in some  
13 instances, they will do a minimal filing to  
14 escape instant scrutiny at the time of the  
15 election, and then complete the filing  
16 thereafter.

17 We saw that we could not penalize,  
18 because of the statutory language, we therefore  
19 submitted a bill to the Legislature just last  
20 year, requesting that the words complete report  
21 be included in that statutory provision, so that  
22 the penalty provisions could be exercised against  
23 those particular people.

24 Q. So if I heard you correctly, the  
25 answer to my question is no, you do not believe

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2 you have the authority to promulgate regulations  
3 requiring complete reports?

4

A. We do, but we have no enforcement  
5 tool, other than the Article 16 provisions about  
6 going into court. But there is still no penalty  
7 ability.

8

Q. Do you recall that I and a colleague  
9 met with you and Mr. McCarthy back in December in  
10 your offices?

11

A. Yes.

12

Q. And do you recall at that time, that  
13 either you or Mr. McCarthy summed up the issue of  
14 the enforcement authority of the State Board of  
15 Elections in this area, as essentially the  
16 authority of a paper tiger?

17

A. Mainly because of our ability, what we  
18 were doing to impress on you at the time, and I  
19 believe you will agree, is the need for better  
20 penalty abilities. This is in the context that  
21 that was used.

22

We have been requesting for some years  
23 now the ability to similarly fine violators,  
24 because what we have right now is a situation  
25 where we have two choices. And let's set aside



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2 the failure to file for a minute, which we have  
3 the civil \$100, but only in that area.

4

5 In all other enforcement matters, we  
6 have two choices; find that it is a crime, and at  
7 least a misdemeanor, some felonies, or dismissing  
8 the matter. Now, when you have errors, and there  
9 are many of them in the Election Law which are  
10 violations, which a DA would probably never  
11 touch, I will just give one example.

12

13 Contribution limit is \$2,000, someone  
14 contributes 2400, 2300 dollars. Now, in order  
15 for any successful penalty to be accomplished, we  
16 would have to transmit that to a district  
17 attorney, a district attorney would take that,  
18 put it together with his rapes, murders and et  
19 cetera, and decide his own priorities and go  
20 forward.

21

22 Well, as you can see, the probability  
23 of going forward is very low. That doesn't stop  
24 us from doing it, but we do recognize the  
25 situation. Therefore, we would very much like to  
26 have the ability to provide a civil fine system.

27

28 MR. BIENSTOCK: Mr. Chairman, I have  
29 no further questions at this time.

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CHAIRMAN FEERICK: I have a few questions, and I know that the other members of the panel have some questions as well.

Let me just start out with a very basic kind of question. In my business, law school administrator, I find it very helpful to attend conferences which are attended by law school administrators from all over the country. It provides me with information about what's happening that I can consider for implementation at the law school of which I am the administrator.

I am aware that there are national conferences to which different states in the United States send representatives to communicate about common issues and problems, and I am just curious whether New York State is regularly represented at those conferences?

THE WITNESS: Yes, we are, Mr. Chairman. We do examine the schedule, decide whether or not the particular agenda makes it cost-effective to go, but we definitely attend those conferences, either one, two, three people maybe from the agency, again looking at it from a

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2 cost-effective basis.

3

CHAIRMAN FEERICK: I would ask you to  
4 provide me with some information on that, because  
5 information which I have received, which may not  
6 be accurate, is that our state is not regularly  
7 represented at, take, for example, the Conference  
8 of Ethic Commissioners from around the country.  
9 That meets for several days in some setting, and  
10 if that information is incorrect, I certainly  
11 would like to be correct on that.

12

THE WITNESS: Mr. Chairman, I can  
13 comment on that one particular organization.  
14 Several years ago, when it first started getting  
15 off the ground, I was involved with it. I went  
16 to the conferences. However, what we found, the  
17 organization is a, let's call it a blend of  
18 several disciplines. Lobbying, campaign  
19 financial disclosure, office incumbent financial  
20 disclosure, ethics, et cetera.

21

What we found was that in a three-day  
22 session, being held in Hawaii or San Francisco,  
23 one half-day was devoted to campaign finance  
24 disclosure. That's not cost-effective, as far as  
25 we were concerned.

1  
2           They are changing their emphasis  
3 somewhat right now to provide more of the seminar  
4 to financial disclosure. We have recently  
5 rejoined the organization, and will be taking a  
6 greater part.

7           CHAIRMAN FEERICK: I might also  
8 indicate that some of the law school functions  
9 that I made reference to are held in similar  
10 settings as well.

11          THE WITNESS: I have no objection to  
12 the setting. It just costs more to get there,  
13 Mr. Chairman.

14          CHAIRMAN FEERICK: You made reference  
15 to the lack of interest in old records, I  
16 believe, in the course of your testimony, and  
17 sort of left me with the impression that nobody  
18 had an interest in old records. I am just  
19 curious, would that be an accurate impression to  
20 draw away from your testimony?

21          THE WITNESS: I think it would be to  
22 say that no one ever brought to my attention the  
23 desire to retain these records, yes, that could  
24 very well be that is just what I said.

25          CHAIRMAN FEERICK: You also made

1

2 reference to there being an 8 percent error rate

3 --

4

THE WITNESS: 80. 80 percent.

5

CHAIRMAN FEERICK: Eight-oh?

6

THE WITNESS: Yes.

7

CHAIRMAN FEERICK: 80 percent error

8

rates in the reports filed with you. Would you

9

group, if you can, where those errors occur, what

10

are the categories of mistakes that would appear

11

in these forms?

12

THE WITNESS: You have mathematical.

13

You have improper placement. And many times, the

14

placement one is just as great as any other. And

15

if I may give you just one little example,

16

because it just recently happened. In the course

17

of examining a financial report of an incumbent

18

Senator's political committee, we came upon a 20

19

something thousand dollars transfer from a bank

20

to the political committee, jumped right out at

21

us. I think the contribution limit was something

22

like \$8,000, approximately.

23

Upon examination, we found that the

24

treasurer, each time she rolled over a CD when

25

one became due, when one had matured and she

1

2 rolled it over, she would record it as an in and  
3 out total transfer, so that on any one report you  
4 might see a \$20,000 income, which after we got  
5 into it, in looking at all of the entries, not  
6 once had there real cash or monies available  
7 changed except for the interest earned. But you  
8 just kept these \$20,000.

9

I didn't mean to take your time, but  
10 this is the type of thing we are getting, and if  
11 the data isn't clean, we are going to see that  
12 the statistics just do not show the truth.

13

CHAIRMAN FEERICK: If other categories  
14 of errors occur to you, as I am sure they will,  
15 after your testimony today, I would appreciate it  
16 if you would provide us with information as to  
17 those categories of errors.

18

THE WITNESS: I would be glad to,  
19 Mr. Chairman.

20

CHAIRMAN FEERICK: And going back to  
21 my first question, I would appreciate any  
22 information you can provide about New York's  
23 attendance at conferences attended by  
24 representatives of other states to discuss up to  
25 date technology, and different techniques that

1

2 are being used to police, to make sure that  
3 campaigns are being conducted honestly, in a  
4 particular location.

5

I recognize Commissioner Emery.

6

MR. EMERY: Mr. Wallace, are there any  
7 documents generated by the State Board of  
8 Elections staff for internal use that analyze,  
9 that compile, that synthesize and consolidate  
10 information about the various filings that are  
11 for internal use, but that are not made publicly  
12 available?

13

THE WITNESS: No.

14

MR. EMERY: So is it fair to say then  
15 that the upshot of your testimony with respect to  
16 the activities of the State Board of Elections is  
17 that it is really a compiling agency and an  
18 agency which oversees and attempts to get  
19 corrected and in worst cases will attempt to  
20 pursue some sanctions for violations of the  
21 reporting requirements of the Election Law?

22

THE WITNESS: Okay, and I assume  
23 you're speaking strictly from the financial  
24 reporting function of our agency.

25

MR. EMERY: Yes.

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THE WITNESS: I think, Commissioner, that we have left out one very important item here, and that is the failure to file efforts.

MR. EMERY: Aside from the failure to file efforts.

THE WITNESS: Yes. Aside from the failure to file, our primary function again, and I must ask the record and say because of limited ability, limited resources, is the processing of the documents.

MR. EMERY: What initiatives, if any, have you undertaken to expand your functions to include analysis, public dissemination of simplified factual information, revelations about particular campaigns around the state, what kind of initiatives have you undertaken, if any, to undertake programs of that sort?

THE WITNESS: I think I have to go back to what I said before. We would very much like to do these things, but the initiatives must begin with the resources to do them, and thus far we have been totally limited on that. Or excluded, I should say.

MR. EMERY: Let me ask you a little



1

2 bit about that. I take it that your Commission  
3 structure is two Republicans and two Democrats.

4

THE WITNESS: That's correct.

5

6 MR. EMERY: And your four chief staff  
7 people are also in fact two Democrats and two  
8 Republicans?

8

THE WITNESS: That is correct.

9

10 MR. EMERY: In terms of getting  
11 resources for the kind of functions that I just  
12 described, namely revelations about particular  
13 campaigns, compilations, analyses, public  
14 dissemination of information, isn't it really a  
15 formula for paralysis to have these two opposite  
16 parties at loggerheads at the leadership of your  
17 agency?

17

18 THE WITNESS: Neutrality, through  
19 bipartisanship, does have its downside, in that  
20 we have no sponsor, godfather, if you will, to  
21 promote and push through a program for us, or a  
22 budget. On the other hand, the trade-off, I  
23 believe, becomes very expensive.

23

24 MR. EMERY: Isn't it really worse than  
25 that? Doesn't it have to be the case that the  
two Democrats are afraid that the two Republicans

1

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21 promote and push through a program for us, or a  
22 budget. On the other hand, the trade-off, I  
23 believe, becomes very expensive.

23

24 MR. EMERY: Isn't it really worse than  
25 that? Doesn't it have to be the case that the  
two Democrats are afraid that the two Republicans

1

2 will take the initiative and use the agency to  
3 embarrass Democrats and vice versa?

4

THE WITNESS: Not at all. I have  
5 never found in my almost 14 years in this type of  
6 climate. The Commissioners have always worked  
7 very well together.

8

But just for an example, if I may, we  
9 have decided over 400 law enforcement cases in  
10 the 14 years. Approximately ten, and no more,  
11 ten of the 400 have been by split decisions.

12

MR. EMERY: But they haven't worked  
13 very well together at either getting you more  
14 budget and they haven't worked very well together  
15 at creating initiative to go well beyond the  
16 compilation area, have they?

17

THE WITNESS: There was no one there  
18 -- if we were all one party and we happened to be  
19 the administration's party, I would guess that it  
20 would be easier. This neutrality, as I stated,  
21 does breed this, call it lack of support.

22

I think another thing that we have to  
23 recognize, too, is that in effect, the  
24 Legislature is our clientele. We are asking them  
25 for more auditors, more investigators, so that we

1

2 can do a better job reviewing the reports of  
3 legislators, and so forth. I think there is a  
4 reluctance there.

5

MR. EMERY: There is an inherent  
6 conflict of interest there, that is you have to  
7 bite the the hand that feeds you?

8

THE WITNESS: That's correct.

9

CHAIRMAN FEERICK: Judge Meyer.

10

JUDGE MEYER: It may not be possible,  
11 but the problem is one of the party people in the  
12 Commission working too well together, rather than  
13 not working together at all?

14

THE WITNESS: That has been an  
15 argument that has been advanced. I have not  
16 really seen it, Judge, and that's about the best  
17 way I can answer it. But it is theoretically  
18 possible.

19

CHAIRMAN FEERICK: Commissioner  
20 Magavern.

21

MR. MAGAVERN: Mr. Wallace, you were  
22 here for Mr. Tenenini's testimony, were you not?

23

THE WITNESS: Yes, I was.

24

MR. MAGAVERN: I think it's only fair  
25 to give you an opportunity to respond to the four

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incidents that he testified to in which he or others in the staff made recommendations for more impressive enforcement or disclosure in programs, and were turned down. Now it may not be fair to ask you to remember all four incidents.

THE WITNESS: I think I wrote them down, sir.

MR. MAGAVERN: I would like if you could give them your explanation then, case by case.

THE WITNESS: Thank you. Okay. Mr. Tenenini stated that, and again, Mr. Tenenini stated several times he had heard or it was his understanding, et cetera. And I hope that it will be recognized as quite a bit of hearsay. But he stated that the individuals were not keyed in because the board was not happy with whose names came up.

I think I have already answered that with -- in other words, our lack of resources. We would very much like to key in all the contributors. We are just unable to, with the number of reports we receive, when we are talking about a staff of four people, that includes the

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2 processing, and so forth, it is just impossible  
3 to do that.

4

MR. MAGAVERN: I had understood the  
5 testimony to be that a program had been  
6 established and the names were coming out and  
7 that the program was then --

8

THE WITNESS: The program was  
9 established. It was our initial desire to do it,  
10 or else we wouldn't have developed the program  
11 work. Again, the technology was there. After we  
12 had gotten to the point, that at this time our  
13 staff was really being pulled down, and it was  
14 decided that if we were going to, well, we  
15 prioritized and it was found that we just did not  
16 have the ability to do it. We would still like  
17 to, this many years later.

18

MR. MAGAVERN: Wasn't the program  
19 already up and running though?

20

THE WITNESS: No, it was not. It was  
21 totally the development stage. This was as part  
22 of the development, this was done on a test  
23 basis.

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MR. MAGAVERN: And at least it  
25 successfully tested then?

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THE WITNESS: Yes, no question about it. The FEC computerizes the contributions. I don't see it as a great problem. There is a few small hangups, such as name spellings, the computer cannot recognize when a first initial issues one time and then a first name is used another.

But all in all, I don't think there's any problem here.

MR. MAGAVERN: Was the decision not to implement that program made by the Commissioners, or by the top staff people, or by both?

THE WITNESS: I would say it was a joint -- of course anything the final decision comes via the commissioners, but I am sure that it was even my recommendation at the time saying we just do not have the personnel to do this.

MR. MAGAVERN: Could you take the next incident then please, and describe it.

THE WITNESS: With respect to field audits now, we explored the potential of doing field audits on a routine basis, not on any other type. Such as a problem. Again we had, as Mr. Tenenini mentioned, we had two audit staff. They

1

2 also supervised all of the office. We could not  
3 do it on a routine basis.

4

5 However, where I would disagree with  
6 what Mr. Tenenini said, that any time that  
7 through the desk audit there was ample reason to  
8 conduct the field audit, to my knowledge, unless  
9 it was short-circuited before it got to me, but  
10 to my knowledge, there should have been an audit  
11 performed there.

12

13 Now, when the statement is they made a  
14 lot of mathematical errors, it looks fishy but I  
15 can't tell you how, I don't think if it was  
16 presented to me in that way I would accept a  
17 particular individual being singled out, and that  
18 what you were doing, if you didn't field audit  
19 everyone, you would have to be selective, and I  
20 wanted good reason to be selective.

21

22 MR. MAGAVERN: Following up on that  
23 last one for a moment, is it your opinion, then,  
24 that the reports did not give a reliable basis  
25 for determining whether something has some fishy  
odor to it?

26

27 THE WITNESS: I think the best -- no.  
28 To what degree fishy? I am having difficulty



1  
2     answering.

3                 MR. MAGAVERN: Let me rephrase the  
4     question then, please.

5                 I think you rejected an idea of going  
6     after committees whose reports appeared to some  
7     staff member to be fishy, because you didn't  
8     think -- you thought it would be unfair to select  
9     out people.

10                THE WITNESS: No, if there was cause,  
11     and that's probably maybe if we can use fishy and  
12     cause in the same text, if there was cause, I  
13     don't recall ever stifling a request to do a  
14     field audit.

15                MR. MAGAVERN: There have been field  
16     audits done then?

17                THE WITNESS: Yes, there have been.  
18     But I will say normally on complaint. Because  
19     again, resources, we must satisfy the people who  
20     are complaining prior to doing our own innovative  
21     work.

22                MR. MAGAVERN: Have there been cases  
23     where you have done field awudits other than on  
24     complaint, on your own initiative?

25                THE WITNESS: I want to say likely,

1  
2 but I don't remember which ones, and I have to  
3 say I don't know since that would be my only  
4 answer.

5 MR. MAGAVERN: In your opinion, are  
6 the reports you received, and are the processes  
7 which you have in place to process those reports,  
8 sufficient to give you a reasonably fair basis to  
9 then go out and field audit cases that appear to  
10 be to raise questions?

11 THE WITNESS: I think the best way I  
12 can answer that, sir, is paraphrase any statement  
13 that our first head auditor, when we first were  
14 created, and he came to me and said that if  
15 someone is go to try to evade or avoid the law,  
16 or violate the law with respect to financial  
17 disclosure, it is not something that we are going  
18 to pick up on the forms unless they are extremely  
19 stupid.

20 Meaning, the real transgressors are  
21 going to be the ones that file fairly good  
22 reports, but have a lot of holes if their books  
23 were checked.

24 MR. MAGAVERN: Does that suggest to  
25 you that your agency or some other agency ought

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2 to be given the ability to go beyond the forms  
3 then?

4

THE WITNESS: That would suggest to me  
5 that if we were to achieve the optimum, every  
6 single political committee would be field  
7 audited, because I don't think anyone will feel  
8 that you can be selective in this.

9

MR. MAGAVERN: Including Internal  
10 Revenue Service?

11

THE WITNESS: Hopefully they have  
12 cause.

13

MR. MAGAVERN: And in your opinion, is  
14 there any way by development of more reporting  
15 requirements, to ferret out the cases of the  
16 sheer dishonesty?

17

THE WITNESS: The sheer dishonesty, if  
18 they are good at it, you're not going to catch  
19 them with reporting whatever -- just like IRS,  
20 very, very similar. IRS does not say we have  
21 developed a system where you cannot violate the  
22 law. They have developed a system where they say  
23 if you do and if we catch you, you're in  
24 trouble.

25

And I think that is about the only

1  
2 direction we can go here.

3 MR. MAGAVERN: They have also, though,  
4 managed to give people cause at least for anxiety  
5 that they may be found out?

6 THE WITNESS: I would like to infuse  
7 the same anxiety.

8 MR. MAGAVERN: How would you do it?

9 THE WITNESS: I don't know. Stiffer  
10 penalties I think would be one thing. I think, I  
11 shouldn't have said I don't know too fast, but  
12 stiffer penalties would be one thing.

13 I think again getting back to the  
14 civil penalties, where we could penalize someone  
15 without going the criminal route.

16 MR. MAGAVERN: In your own opinion, it  
17 would not be fair to have any kind of even a  
18 random field audit system?

19 THE WITNESS: If there was a random  
20 field audit system, I would first of all like it  
21 mandated by the Legislature.

22 Secondly, I would not want to do  
23 it -- once the Legislature mandated it, then we  
24 could set up a reasonable schedule, and I would  
25 not want to go into it without a reasonable

1  
2 schedule so that even though it is called random,  
3 there is a scheme whereby, let's say in a  
4 five-year period, everybody would get the same  
5 treatment.

6 MR. MAGAVERN: Sorry to go back to the  
7 earlier case, Mr. Wallace, but you started out,  
8 the first case you responded to was a case where  
9 you had a test program developed and then  
10 determined that the resources would not be  
11 sufficient to implement it.

12 Was that referring to the early  
13 program in the '70s soon after your board had  
14 been constituted?

15 THE WITNESS: That's correct.

16 MR. MAGAVERN: Mr. Tenenini also  
17 described a more recent, I believe, and I may be  
18 wrong, but a more recent case in which something  
19 was presented to show excess individual  
20 contributions, and I believe the testimony was  
21 that Mr. Polsinello had rejected the  
22 recommendation to implement that program.

23 THE WITNESS: Okay, I think we're  
24 talking about two different things here. The  
25 capturing of the contribution data was the very

1  
2 early attempt, and I think Mr. Tenenini and I  
3 both agree that that's what occurred.

4 MR. MAGAVERN: That was individual  
5 contribution data?

6 THE WITNESS: Yes. I think what came  
7 later, I believe he is referring to I believe  
8 what Mr. Lane, the programs that Mr. Lane  
9 developed. These were for certain statistical  
10 data, and we have not totally done away with  
11 them.

12 They are let's say on hold right now,  
13 but they have not been totally rejected.

14 Q. Who made the determination not to  
15 implement those programs?

16 A. I am not too sure, I am not too sure  
17 how high it went up.

18 Q. Do you know how it got to the board  
19 level?

20 A. I don't recall. I really don't. It  
21 was in the context of everything that was going  
22 on. It was not a big item. And I don't recall  
23 just what happened to it.

24 MR. MAGAVERN: What were the  
25 objectives of that particular program, as

1  
2 presented by Mr. Lane?

3 THE WITNESS: Again, I am not that  
4 totally conversant with it. At that point, it  
5 just didn't rise that high. But I believe it had  
6 to do with capturing certain statistical data  
7 from the reports of incumbent, I believe, and  
8 that was one of the somewhat negative reactions  
9 to it, that it dealt just with incumbents, and  
10 not with the entire field.

11 But as I said, it has not been totally  
12 rejected yet, and it is -- we are trying, and  
13 hopefully this coming year we can do a lot more  
14 with our statistical data, and I am sure we are  
15 going to review that.

16 MR. MAGAVERN: I would just like to  
17 know whose judgment was it that it would be  
18 unfair to just pick on the incumbent?

19 THE WITNESS: I think it was  
20 collective.

21 MR. MAGAVERN: Incumbents would be  
22 members of the Legislature, and the elected  
23 state-wide officers?

24 THE WITNESS: That's correct.

25 MR. MAGAVERN: Did you ever have an

1  
2 interest in determining whether people in office  
3 were receiving contributions from people who did  
4 business with the State Government?

5 THE WITNESS: We had no way of  
6 identifying the, let's call it the correlation,  
7 unless it came through a complaint.

8 MR. MAGAVERN: Would Mr. Lane's  
9 program have helped to identify such?

10 THE WITNESS: No, not at all.

11 CHAIRMAN FEERICK: Commissioner Hynes,  
12 then Mr. Schwarz.

13 MS. HYNES: You just stated in  
14 response to Commissioner Magavern that in the  
15 coming year you think you are going to be able to  
16 do a lot more with statistical data. What is it  
17 that you expect to do in the coming year with  
18 statistical data?

19 THE WITNESS: What we have been  
20 working on is capturing the summary data. As Mr.  
21 Tenenini mentioned to you, I don't know how  
22 better to describe it, but the data that appears  
23 on the first couple of pages of the report, how  
24 much has been expended in the campaign to date.

25 The summary data, and then we will try



1  
2 to again work it in two directions, one to clean  
3 up the data that goes in, then the other is to  
4 get it in and get it out in a meaningful way, and  
5 then in some form publishing it, making it  
6 available.

7 MS. HYNES: When you say get it out in  
8 a meaningful way, you are still dealing only with  
9 that summary data that you would get out?

10 THE WITNESS: That's correct.

11 MS. HYNES: And you are not doing that  
12 today?

13 THE WITNESS: That's correct.

14 MS. HYNES: And is there a reason that  
15 you are not getting out that summary data today?

16 THE WITNESS: Yes. Again going back  
17 to the clean data as I mentioned earlier, we are  
18 finding that it would be -- well, we would be  
19 almost guilty of false reporting if we provide  
20 the data as it appears initially on the financial  
21 reports.

22 MS. HYNES: But I think you are going  
23 to be able to clean up this data and get it out  
24 to the public with the same resources that you  
25 had in the past?

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THE WITNESS: That's certainly our goal. How well we can accomplish it. But I think one thing we are going to need is that director of data processing to draw it all together.

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MS. HYNES: You also testified that you had a staff cut from the very beginning of approximately 51 people to your present complement of 38. Was that cutback in staff, in your view, an effort to dampen initiative on the part of your agency to computerize information?

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THE WITNESS: I wouldn't categorize it as such. I think it was we were the victims of overall cutting, and did not receive special treatment when it came to resurrecting anything.

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MS. HYNES: Is there a reason, or can you under your jurisdiction right now, require the inclusion of employer data in the filings that you receive?

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THE WITNESS: I am not sure. There is two ways of looking at it. The statute tells just what must be reported. Is it the law of exclusion whereby only that can be done, or can we go through our rule and regulation ability and

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2 expand on that?

3 I know our board has taken the  
4 position that they want the Legislature to  
5 require it as opposed to the board require it.

6 MS. HYNES: Why would you require the  
7 Legislature and not act on your own initiative to  
8 include something like employer registration?

9 THE WITNESS: Employer reaction. I am  
10 speaking for the Commission and by this is the --

11 MS. HYNES: Is there any area where  
12 you are comfortable in requiring additional  
13 information where you don't feel that you have to  
14 have the legislature do it?

15 THE WITNESS: Yes. Where the  
16 legislature doesn't speak to exactly what has to  
17 be on and says it can be by accounting rules as  
18 it says in the statute, accounting rules  
19 developed by the agency et cetera, in those areas  
20 I feel the Legislature has given us that broad  
21 ability.

22 MS. HYNES: We heard testimony this  
23 morning that there had been suggestions from  
24 staff, and I believe also common cause had  
25 requested employer information to be included.

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Was that reviewed by you or anyone or the Commissioners as to whether employer information should be included in the reporting?

THE WITNESS: That was one of the things that I was mentioning to you, that the board felt that it wanted legislative direction on it and referred the matter to the legislature.

MS. HYNES: How long ago did they refer it to the legislature?

THE WITNESS: About three years ago, not in the form of a formal but more in the form of an informal process.

MS. HYNES: Was there any follow-up in the last three years?

THE WITNESS: There has been discussion, if that would be called follow up, yes, I would say so.

MS. HYNES: And do you have any view --

THE WITNESS: Excuse me, it might have been less than three years. Because it was as a result of the recommendation that Mr. Tenenini referred to, and that was probably less than

1  
2 that.

3 CHAIRMAN FEERICK: Mr. Schwarz.

4 MR. SCHWARZ: Mr. Wallace, what do you  
5 mean by legislative reaction, you didn't want to  
6 upset the Legislature?

7 THE WITNESS: Yeah, yeah.

8 MR. SCHWARZ: And so you wouldn't want  
9 to promulgate a regulation that you might have  
10 authority to promulgate, but you might not if you  
11 thought it would upset the Legislature?

12 THE WITNESS: First of all, and I will  
13 speak just for myself here, if I was going to  
14 promulgate a regulation which I thought would  
15 probably upset the Legislature, I want to make  
16 darn sure that it was in an area where I had  
17 authority, and don't go out on two limbs of the  
18 tree as opposed to one.

19 MR. SCHWARZ: When you had 51 people  
20 -- first of all, you said your budgets is 2.1  
21 million now?

22 THE WITNESS: Yes.

23 MR. SCHWARZ: Who determines the  
24 internal allocation of your budget, how you spend  
25 it?

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THE WITNESS: Okay, when we submit our budget request, it is a line item budget. Just about every requested amount of money is segregated in the given areas.

When we receive our appropriation, we have a very limited discretionary ability within the entire pot, but it is very limited. It is normally given to us in the way we present it which is what is referred to as line item.

MR. SCHWARZ: So that when you present a budget for let's say 2.5 million dollars, hoping for some increase, you would set forth in that proposal the breakdown of how you intended to spend that?

THE WITNESS: Very detailed, in fact.

MR. SCHWARZ: And how in percentage there is any difference between the expenditures that you make for campaign finance and disclosure activities as opposed to the rest of your activities?

In other words, you propose how much you're going to spend in each area; is that correct?

THE WITNESS: Yes, we do. Normally,

1

2 the way it's done, however, is you always build  
3 on the prior year. You start with the prior year  
4 as a given; then you are working on additions and  
5 subtractions.

6

MR. SCHWARZ: So rough allocation in  
7 your office of having four clerks and one  
8 accountant in charge of all campaign financing  
9 activities is basically a decision that's been  
10 made by you and your fellow commissioners prior  
11 to the time that you filed for your budget; is  
12 that right?

13

THE WITNESS: No. Even if we  
14 requested let's say change an investigator  
15 position to an accountant position, even though  
16 we are talking about the same amount of money,  
17 that must clear through budget.

18

We did not have that discretionary  
19 ability.

20

MR. SCHWARZ: I don't think I am  
21 making myself clear. The percentage of the  
22 amount of your budget that you spend on the  
23 activities of campaign financing disclosure,  
24 that's an internal determination by you --

25

THE WITNESS: Not at all sir. Not at

1

2 all. That is outside our agency.

3

MR. SCHWARZ: How is that decided?

4

5 and by the legislature.

6

MR. SCHWARZ: In other words --

7

8 first reviews our budget request, approves or  
9 disapproves, what they come up with goes into the  
10 Legislature as part of the Governor's executive  
11 budget.

12

13 MR. SCHWARZ: Let's cut through this.  
14 My question is who has determined to use -- to  
15 have the entire part of the State Board of  
16 Elections that deals with this area -- four  
17 clerks --

18

19 THE WITNESS: I don't think you  
20 understand the process.

21

22 MR. SCHWARZ: Excuse me, let me finish  
23 my question. I want to know who has determined,  
24 whether it's internal or in the State Government  
25 or elsewhere, the resources that will be used to  
26 deal with campaign financial disclosure activity?

27

28 THE WITNESS: I don't know how to  
29 answer you any other way than what I have.



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Either I am not understanding your question or  
you're not understanding my answer.

JUDGE MEYER: I think if you limit it  
to the original budget as presented.

THE WITNESS: Oh, back in 1974?

JUDGE MEYER: No, in any one year you  
start with budget.

THE WITNESS: Which has been approved  
in preceding years. See, this is the point. The  
budget we are starting with is a budget that has  
been approved in preceding years.

JUDGE MEYER: You have no authority to  
change it?

THE WITNESS: No. From that we may  
ask for additions or subtractions, but it is  
strictly requests.

MR. SCHWARZ: Let's go back to the  
last year when you got 2.1 million. How much did  
you ask for?

THE WITNESS: I don't know exactly.

MR. SCHWARZ: Did you ask for a  
different percentage of expenditures to be made  
on campaign finance than you were receiving now,  
than you are permitted to spend?

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THE WITNESS: Probably what you are getting to is what I mentioned earlier. I have given Mr. Bienstock a list of, over the last several years, the number of new positions we had requested in the audit section that were not approved. I think if that can help you in answering your question.

MR. SCHWARZ: And what was that.

THE WITNESS: I don't have the list here, but he does. I mean not here.

MR. SCHWARZ: You had 13 more people, you said you went from 15 to 38. How many of those 13 acted in the campaign financing?

THE WITNESS: I don't really know for sure. I would say maybe a third.

MR. SCHWARZ: Can that information be made available to us?

THE WITNESS: Yes, I believe we could.

MR. SCHWARZ: On your staff now you have one accountant, four clericals. I assume the accountant is the expert in the campaign finance area?

THE WITNESS: Hopefully, yes.

MR. SCHWARZ: And are there others

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2     aside from the counsel?

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THE WITNESS: There are others in the board.

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MR. SCHWARZ: Aside from the two counsel who are expert in the campaign financing areas, as opposed to the petition and registration area?

9

10

11

THE WITNESS: I would say I have a degree of knowledge in it. Other than that would probably be it.

12

13

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16

MR. SCHWARZ: So basically there are roughly three or four people now in the State Board of Elections who have any expertise in these areas aside from the clerks who know which forms with which?

17

18

THE WITNESS: I'd say that would be close, yes.

19

20

21

22

MR. SCHWARZ: What types of investigations have you conducted in this area, that is the area of campaign finance in the last couple of years?

23

24

25

In other words, aside from reading the form, picking up any arithmetical errors, filing them in whatever drawer you file them, what types

1  
2 of investigations?

3 THE WITNESS: Excess contributions,  
4 excess corporate contributions.

5 MR. SCHWARZ: And how have those  
6 investigations proceeded?

7 THE WITNESS: I know of one right  
8 offhand that we turned over to the district  
9 attorney, just in the past year or so.

10 MR. SCHWARZ: Are they field  
11 investigations?

12 THE WITNESS: Yes.

13 Q. And they start from what?

14 A. One of them started from a complaint.  
15 that there were certain corporations that had  
16 exceeded their limit.

17 Q. Aside from the pyramid investigation  
18 of which we are all familiar, are there other  
19 investigations?

20 A. I wasn't referring to that one.

21 Q. And one of them you say started from a  
22 complaint, and the rest were internally  
23 generated?

24 A. No, I said I know that one started  
25 from a complaint. The reason I am having a

1

2 little difficulty here is I don't work directly  
3 with the law enforcement, and --

4

Q. Who would that be?

5

A. Mr. McCarthy.

6

MR. SCHWARZ: You said that you think  
7 the penalty area ought to be increased, and you  
8 ought to have civil fining authority. Now, have  
9 you made any analysis of the assembly proposal of  
10 \$375,000 to determine --

11

THE WITNESS: For what I am sorry?

12

MR. SCHWARZ: To determine in what way  
13 that would enable you to increase your  
14 investigations, or your staff?

15

THE WITNESS: I am sorry, 375,000 for  
16 what?

17

MR. SCHWARZ: The proposed assembly  
18 bill as an increase in your budget, which I guess  
19 I assumed that you were familiar with that,  
20 \$375,000.

21

THE WITNESS: Oh, you're referring to  
22 the public financing bill?

23

MR. SCHWARZ: I am referring to the  
24 bill that has passed the Assembly that includes  
25 public financing and also increases your budget

1

2 by \$375,000.

3

4 THE WITNESS: I am sorry, I didn't

5

6 know what bill you were referring to.  
7 MR. SCHWARZ: Have you analyzed that  
8 375,000 to determine what, if anything, you would  
9 be able to do with it, and how it can affect your  
10 internal structure?

11

12 THE WITNESS: Everything depends on  
13 what year, how close you would be to the year of  
14 public financing. If it were to be effective, if  
15 public financing was to be effective say for the  
16 first time in the 1990 and it was passed this  
17 year, the 375 would give us just about sufficient  
18 money for startup. If it was passed --

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MR. SCHWARZ: The startup of what?

THE WITNESS: The public financing  
operations.MR. SCHWARZ: I guess that's my  
question. It wouldn't affect everything else we  
have already been talking about here, with  
respect to your --THE WITNESS: No, that's strictly a  
cost analysis for public financing for the  
administration thereof.

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MR. SCHWARZ: And would this allow you to conduct field audits with respect to public financing?

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THE WITNESS: I would say yes, there has been money factored in there, to be able to audit when they, after expenditures have been made, and they make the reports on how they expended the public monies, there would be that ability.

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MR. SCHWARZ: So the 375 would permit you to deal with the new aspects of the law, but would not, I take it, give you any resources to computerize general contributions to legislative races, to races around the state, such as Mr. Bienstock was inquiring?

17

18

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21

THE WITNESS: At first blush I would have to say no, but I would be the first to acknowledge that there has not been the study made to that extent, where I can be persuaded in my response to you.

22

23

24

MR. SCHWARZ: Well, you have analyzed how much it would cost you, have you not, in connection with the budget?

25

THE WITNESS: Very roughly. There is

1  
2 still several variables in that. Such as over  
3 what period of time will they be required to be  
4 active in the public financing responsibilities.

5 MR. SCHWARZ: Aside from that area  
6 what I am inquiring --

7 THE WITNESS: That area has an awful  
8 lot to do with it. Because until we know the  
9 time period in which the people are required to  
10 act, how do we know what what other times are  
11 available.

12 MR. SCHWARZ: Now let's look at  
13 today's world as it exists without public  
14 financing. Have you made a determination as to  
15 what the resources are that you would need in  
16 order to do field audits, whether random or  
17 otherwise, in order to computerize data so that  
18 when the president wants to know how much money  
19 Mr. Jones has given to campaign races across the  
20 state, somebody can push a button and that number  
21 comes out, just like it would the Federal  
22 Election Commission.

23 THE WITNESS: It is absolutely  
24 impossible for me to answer a question which says  
25 random or otherwise. I mean, if you can give me



1

2 a specific program, I can try to give my best  
3 dollar estimate to it.

4

5 I cannot talk in generalities, when I  
6 have no -- when I do not know for sure from where  
you're coming.

7

8 MR. SCHWARZ: What I would request is  
9 I assume that somewhere you have prepared or  
10 someone has prepared an analysis of how much it  
11 will cost to do various computerization projects,  
12 field audits and the like, and you have done an  
13 internal analysis of those expenses in connection  
14 with either discussions with the legislature or  
15 budget applications, and I would request you  
submit that to us so we may look at it.

16

17 THE WITNESS: I will do the best I  
can.

18

19 MR. SCHWARZ: Within your budget, have  
20 you made any determination as to how much it  
21 would cost to require filers to type their forms  
rather than handwrite them?

22

23 THE WITNESS: No, that not be  
24 something that we would do a cost analysis, since  
we were not performing the task.

25

MR. SCHWARZ: And it wouldn't cost you

1  
2 anything, that's correct?

3 THE WITNESS: That's correct.

4 MR. SCHWARZ: Have you done that?

5 THE WITNESS: Why would I do it if it  
6 didn't cost us anything?

7 MR. SCHWARZ: No, have you asked that  
8 people file printed typed forms rather than  
9 handwritten forms?

10 THE WITNESS: No.

11 MR. SCHWARZ: Have you disclosed at  
12 any time, like we have in New York, they call it  
13 I think the roach patrol, when they indicate  
14 which restaurants have not complied with the  
15 State Health Code, they make certain releases;  
16 have you at any time made any releases of who has  
17 filed either incomplete filings or late filings  
18 in a public way?

19 THE WITNESS: I think you will see  
20 that in the press following the financial  
21 reporting periods, there normally appears who has  
22 failed to file. They get this and the press is  
23 very well aware that we produced, the first thing  
24 we produce is what we call a five-day letter  
25 list, computer generated. That is made available

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2 to the press.

3

4 We then go into the show cause order  
5 process, which again is listed and available to  
6 the press, and then we go through our judgment,  
7 which is again available to the press, and they  
8 were very much aware, they know when it's coming  
9 out, and they make good use of it.

9

10 MR. SCHWARZ: How about incomplete  
11 filings, do you make any releases of that?

11

12 THE WITNESS: Incomplete filings?

12

13 MR. SCHWARZ: Yes. You said before  
14 that one of the great difficulties that you have  
15 is you currently have a penalty of \$100 for  
16 nonfilers.

16

17 THE WITNESS: Now, no, this would not  
18 be the type of thing that would be conducive to a  
19 list. It comes about when the reports are  
20 audited, and it could be one today, one tomorrow,  
21 one the next day.

21

22 It is not something that everybody's  
23 required to do at a given time, then you produce  
24 a list.

24

25 MR. SCHWARZ: Do you then disclose  
after a determination has been made, who filed an

1

2 incomplete filing? Did you make a public  
3 disclosure of it?

4

THE WITNESS: Sure, we do. The  
5 correspondence, any correspondence that goes back  
6 to any committee treasurer or candidate is  
7 available, under the Freedom Of Information Act,  
8 is in the file and the press has access to it.

9

MR. SCHWARZ: I don't mean the Freedom  
10 of Information Act request. I mean do you  
11 disclose it? Do you put it in a newsletter, do  
12 you put it in any public release?

13

THE WITNESS: Would I put in a release  
14 that somebody didn't release the address of two  
15 contributors? No.

16

MR. SCHWARZ: So you don't do anything  
17 to make a release of incomplete filings for  
18 whatever reason?

19

THE WITNESS: If we're talking about  
20 is the list of addresses incomplete, et cetera,  
21 no. I don't like general questions. If you want  
22 to give a specific question.

23

MR. SCHWARZ: I would like to you  
24 answer my specific question. That is whether you  
25 in any way make any releases with respect to

1  
2 filings that are incomplete for whatever --

3 THE WITNESS: Would you please define  
4 incomplete?

5 MR. SCHWARZ: For whatever reason.

6 THE WITNESS: Would you please define  
7 incomplete?

8 MR. SCHWARZ: For whatever reason.

9 THE WITNESS: I am asking you to  
10 define incomplete.

11 CHAIRMAN FEERICK: I am going to bring  
12 the testimony to a close. I will recognize one  
13 other person to ask a question, but I would like  
14 to put something --

15 MR. BIENSTOCK: Mr. Chairman, I hate  
16 to interrupt, but if you are going to ask any  
17 significant number of questions, I would ask that  
18 perhaps we be allowed to take Mr. Stern out of  
19 order. He has a scheduled appearance out of  
20 town.

21 CHAIRMAN FEERICK: What I have just  
22 said is I am going to ask a question, and I will  
23 recognize one other person for a question and  
24 that's it.

25 My question is this: I assume that

1  
2 believe that the FEC has an advantage that we  
3 don't.

4           And it's just one that you're not  
5 going to correct, it's there, and that is when  
6 you deal with Congress, Congressmen, the  
7 candidate for Congress, they will normally get a  
8 more sophisticated treasurer, by that I mean one  
9 who is familiar with the laws or familiar with  
10 the county practices and procedures.

11           What we find very often is that we  
12 will be dealing with treasurers for assembly  
13 candidates, Senate candidates who are someone's  
14 brother-in-law or sister-in-law, who do not have  
15 a good knowledge of what the requirement is.

16           The example I gave the Chairman a  
17 little while ago is fairly typical of what we run  
18 into. So our biggest hope is education which we  
19 are trying to do. We have from time to time over  
20 the Board's existence conducted seminars  
21 throughout the State for treasurers, political  
22 committees, candidates and so forth.

23           This spring we will be doing another  
24 round of them around the state which are also  
25 revising our booklet, again trying to get more

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education out, trying to cut down on the

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inability of the people to be accountants, in

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effect.

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MS. GORDON: Have you conferred with

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our state agencies that collect financial data

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forms such as tax returns and government

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disclosure statements to learn from them what you

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might about reducing that 80 percent error?

10

THE WITNESS: Not on a formal basis,

11

but informally we have discussions. Their main

12

feedback is education.

13

CHAIRMAN FEERICK: I am going to say

14

thank you very much, Mr. Wallace, and just let

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you know that we would want to have much more

16

communication with your agency.

17

THE WITNESS: Very good, Mr. Chairman,

18

thank you for the opportunity to testify.

19

THE CHAIRMAN: We will take a

20

two-minute recess.

21

(Recess taken.)

22

CHAIRMAN FEERICK: Mr. Stern.

23

W I L L I A M        S T E R N ,

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having been first duly sworn by the

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Chairman, was examined and testified as

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order. Call as the next witness Ethan Geto.

E T H A N G E T O,

having been first duly sworn by The  
Chairman, was examined and testified as  
follows:

CHAIRMAN FEERICK: Recognize  
Commission Counsel Robin Shanus.

EXAMINATION BY MS. SHANUS.

Q. God afternoon, Mr. Geto, do you own a  
public relations firm?

A. Yes, I am a in public relations firm.

Q. What is the name of the firm?

A. Geto & DiMille Inc.

Q. And what was your role in Mr. Abrams'  
1986 campaign?

A. I served as senior political adviser,  
strategist, I think the title that I gave myself  
was campaign director. We had a campaign manager  
who worked on a full-time basis at the campaign  
headquarters.

I worked out of my firm, which is also  
a political consulting firm, and my job was to  
supervise the media, package for the campaign,  
supervise the press relations for the campaign, I



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was in charge of political strategy for the campaign, and I also had a role in the fundraising area.

Q. Were you also the treasurer for Citizens For Abrams?

A. Yes.

Q. You mentioned that you directed the campaign from your offices. Was Geto & DiMiele retained by the campaign?

A. Yes.

Q. And so then you worked for the campaign in your capacity as partner in Geto & DiMiele?

A. Yes.

Q. Prior to the 1986 campaign, had you previously worked for Mr. Abrams?

A. Yes. I have been associated with Mr. Abrams since 1970. I joined his staff on January 1, 1970, the first day he assumed office as Borough President of the Bronx.

At that time, I served as his press secretary. And since 1970, I have been his senior political adviser, strategist, campaign manager, and had served from time to time in

1

2 governmental capacities in his governmental  
3 agencies to which he was elected.

4

Q. You also mentioned that you were  
5 involved with directing the media program of  
6 Mr. Abrams' campaign?

7

A. Right.

8

Q. Did you hold that role in 1982  
9 election as well?

10

A. Yes.

11

Q. And was it in that capacity that the  
12 campaign committee employed Geto & DiMiele media  
13 services?

14

A. Well, Geto & DeMiele media services is  
15 just an accounting, it's really a separate account  
16 that we maintain for the purposes of paying,  
17 making payments to radio and television stations,  
18 and for newspaper advertising and so forth. So  
19 we segregate those funds for we call a time buy,  
20 and it was really simply, it's not a separate  
21 entity as much as it is a separate you know bank  
22 account to write out checks for the express  
23 purposes of media advertising purchases.

24

Q. Mr. Geto, as campaign director, did  
25 you devise Mr. Abrams's fundraising strategy, or

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at least play a part in devising it for the 1986 campaign?

A. Yes.

Q. Did you do that by yourself, was it a solo effort or did you work with someone else?

A. No, I would say the principal other individual with whom I worked is here as a scheduled witness today, Lawrence Bittenwieser, who has served for a number of years as chairman of Mr. Abrams' finance committee.

Q. How much money did Mr. Abrams try to raise for the 1986 campaign?

A. We targeted roughly two and a quarter million dollars for that campaign, I believe. Something in that neighborhood.

Q. Do you recall how that would compare with Mr. Abrams' 1982 target amount?

A. Yeah. I would say it's roughly double. Roughly double. And that was not because we were hoping or expecting to conduct a campaign that would be twice the scope of the 1982 campaign. But basically, because the essential costs of the campaign, in a campaign, a state-wide campaign in New York State, had maybe

1  
2 perhaps not quite double, but had come close to  
3 doing that, and this was therefore a goal that  
4 was established to more or less equal the  
5 reelection effort of the '82 level, the main  
6 reason for that increase in funding was because  
7 costs had escalated, particularly the cost of  
8 television commercials.

9 Q. So then taking away the inflation  
10 factor, which I believe is what you're  
11 mentioning, Mr. Abrams spent essentially the same  
12 amount in the 1982 race when he was an insurgent  
13 as he did in '86 when he was an incumbent?

14 A. He was not an insurgent in '82, he was  
15 running for his third term in '86. He was an  
16 insurgent, not an incumbent, there was no  
17 incumbent, in fact, in that race in '78 because  
18 Attorney General Lefkowitz had retired.

19 So I don't know how else I can answer  
20 that besides correcting it.

21 Q. How did you determine how much money  
22 would be needed to fund the campaign, when you  
23 said the 2.25 million dollars?

24 A. Right. Essentially, one has to make a  
25 judgment. If you set out to run what I would

1  
2 call a respectable state-wide campaign, and I  
3 could define that for you, you have to spend  
4 today, given the parameters of campaigns in New  
5 York State, mainly delineated by the costs of  
6 television and radio air time, and there are  
7 other significant costs that come into a  
8 campaign, but I would say for most campaigns, you  
9 would find that the burden or the bulk of the  
10 money is expended on electronic advertising.

11           Given a device to run a respectable  
12 state-wide campaign, i.e. a campaign where you're  
13 going to, you know, have a fair reasonable level,  
14 and this is subjective, of communication with the  
15 voters that you're going to show your commercials  
16 before the voters with a certain frequency, and  
17 you're going to kind of penetrate the  
18 consciousness of voters and of the people of the  
19 State, and you're going to mount an effort where  
20 you're going to have some level of presence  
21 around the state, so people in Buffalo and  
22 Rochester and Syracuse and the Hudson Valley as  
23 well as the New York City metropolitan area will  
24 feel that the candidate is out there, explaining  
25 his or her record.

1  
2           Telling people why they think he or  
3 she merits reelection, and trying to win a vote  
4 of confidence and a mandate for the next term or  
5 the new term and so forth.

6           You have to spend, I believe, at  
7 least, or I believed in 1986, I haven't looked at  
8 numbers since then, but in 1986, 2 to 3 million  
9 dollars at a minimum, in order to accomplish  
10 those kinds of goals.

11          Q.     You mentioned exposure and television  
12 costs. Did the target amount of 2 to 3 million  
13 dollars in any way take into consideration the  
14 identity of Mr. Abrams' opponent, Mr. King in  
15 that race?

16          A.     When you say take into account  
17 Mr. King's identity.

18          Q.     The fact that he posed say not a  
19 serious threat to the office.

20          A.     Okay, I guess I have two answers to  
21 that. Again, to some extent, the answer I  
22 previously gave was irrelevant, as to who the  
23 opponent is.

24                 If the opponent is somebody of great  
25 stature and reputation, or the opponent is a

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virtual unknown, if you sort of in the abstract and independently as a candidate want to reach the voters with a level of exposure about yourself, and that could be for two reasons. I will try to be responsive to your questions. It would be for two reasons.

One is you want to win a vote of confidence and a strong mandate at the polls to justify your programs, and to give you more clout and leverage in your governmental capacity in your subsequent term because you can then claim that voters have affirmed the things that you represent and the things that you are seeking to accomplish, and/or in the case of Mr. Abrams and perhaps many others you aspire to a different and other higher office in the future.

A campaign is a once in four year opportunity to have a level of direct communication with voters via advertising and via direct contact. That is not the case during your four year period of incumbency in a State election cycle will when what you have to say and do is filtered through the news media.

And that's not to disparage the news

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2 media and not to say that they don't typically  
3 accurately reflect what an incumbent tries to  
4 express.

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6 But there is no question about it that  
7 a campaign is a unique opportunity to have direct  
8 communication with voters, which is essential in  
9 our democratic, small D, political process.

10 Q. Could you estimate what percentage of  
11 the overall combined budget was spent on media  
12 efforts?

13 A. Well, this is something that you or I  
14 could determine with accuracy very quickly, by  
15 looking over the records and seeing the  
16 percentages spent, because it's clearly spelled  
17 out in the filings.

18 Just off the top of my head, so it's  
19 just a guess, I would say something in the 75  
20 percent range.

21 Q. So then the expenditures or monies  
22 that went to Geto & DeMiele media services  
23 represent the actual costs of the media service?

24 A. Yeah. We negotiated with the Abrams  
25 campaigns as we did with or with Mr. Abrams and  
other representatives of the campaign, a



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2 percentage.

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4 In other words, there is a standard  
5 agency commission, when you are an advertising  
6 agency buying ads for a politician or for a  
7 product, typically the manufacturer or the  
8 candidate would give you \$100, you would deduct  
9 the 15 percent commission, there is gross and net  
dollars.

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11 Actually we took a smaller  
12 commission. So of the money that went through  
13 Geto & DeMiele media services, I am guessing now,  
14 I don't remember exactly, but I would say 90 to  
15 92 percent of those dollars that you see listed  
16 in that went for direct payment to television and  
17 radio stations and some other percentage that 10  
18 percent or less range went as a commission fee to  
19 us in part to pay us for the time we allocated in  
20 preparing the time buy, which we did in-house in  
21 to your firm and for implementing the time buy  
22 and also in consideration for our general fee and  
of services for the campaign.

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24 Q. Mr. Geto, how did you approach  
25 fundraising for Mr. Abram's campaign? Were  
certain target groups selected?

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A. Yes. Our finance committee with my participation developed a general target budget, and it consisted of three major elements. We targeted approximately a goal of one and a half million dollars to raise from major donors, from people making significant contributions. Up to \$500,000 or something in that range, about \$400,000 that what we called a reach-out effort, which was where he contacted dozens of people, and asked them if they would host parties, essentially at their homes, sometimes in somebody's office or some other other location, but mainly there was at home parties, and then approximately \$300,000 from labor.

Q. And how were these three target groups chosen as potential areas for funds for Mr. Abrams?

A. Well I guess basically, those goals were shaped and informed by past experience. I personally have run many, many state-wide election campaigns for Mr. Abrams, and I have worked on many others over the last many years, and it was our best judgment, as to what areas would be -- where we would be most successful,

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given these targeted numbers.

I mean, if we felt that we could raise about a million and a half from major donors, we felt that we could raise \$400,000 or thereabouts from at home parties. We made all kinds of calculations.

Somebody in Westchester County could hold a party on a Sunday afternoon and charge X amount and that would yield this. We went through those kind of calculations.

And then based on our past history contributions from labor unions, and you know what we thought might be appropriate within the political contribution budgets of various unions, which many of which give on a traditional basis, we derived those numbers.

Q. Do you ever use direct mail solicitations?

A. Rarely. In terms of mass mailings. It has been my analysis over the years something been associated with a variety of different campaigns and candidates, that it is difficult to raise large sums of money through direct mail unless you have one or two particular factors

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You know, as per, for example, the race in '82 with Governor Cuomo versus Lou Lehrman on something, which had both ideological content and the sense that there was a real race going on there.

I think barring those two factors, it's very difficult to raise money through direct mail.

Q. So then barring those two factors in general terms in the fundraising efforts, who do you really rely on for contributions to Mr. Abrams' campaign?

I mean, these people are not people who are ideologically oriented; is that basically a fair statement?

A. Well, it's not entirely a fair statement, I suppose, because Abrams like most other people who have been in public life for a number of years has a constellation of issues and positions with which he is identified, and I think that, I don't think I am being contradictory, because in the sense of if Mr. Abrams, for example, was unchallenged in 1986, if it was perceived credibly by members of the

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2 public that Bob Abrams was likely to be defeated,  
3 for example, let's say by an extreme right wing  
4 candidate who would not have the record on civil  
5 rights, civil liberties, women's issues, consumer  
6 issues, environmental issues that he has, I think  
7 that we might very, very well have succeeded with  
8 a direct mail campaign.

9 But I don't think that precludes my  
10 saying to you now that a significant portion of  
11 the funds that Abrams raised through direct  
12 solicitation in part came from a number of people  
13 because they like what he stands for in public  
14 life.

15 Q. Mr. Battenwieser we mentioned earlier  
16 as the finance chairman will testify on  
17 solicitation process of the major contributors.  
18 But could you just tell us how much money an  
19 individual normally contributes to be classified  
20 as a major contributor?

21 A. I think the parameters that we had,  
22 that was largely successful, was \$15,000.

23 Q. Mr. Geto, you also mentioned something  
24 that you called a reach-out program, in terms of  
25 a fundraising effort.

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A. Right.

Q. Was that used to solicit funds from individuals that you identified as smaller contributors?

A. Yes.

Q. And how did this reach-out program work?

A. The reach-out program essentially was that internally to the campaign we developed a list of several dozen people, many of whom, if I were to broadly characterize the list, I would say it includes Abrams' family members, long-time friends, several people on the list were his college and/or law school classmates or roommates.

It involved people he knew through communal civic and philanthropic work, for example, in the Jewish community. It involved people who are long time political supporters, who admired him liked him worked with him in past campaigns and so forth, and we would approach these people and ask them look, would it be possible for you to either in part donate yourself and/or raise from friends, colleagues,

1  
2 associates, so on, at parties, basically at  
3 parties where we said if you could tell us at a  
4 certain point in time that you're going to have a  
5 lot of people, and/or some significant amount of  
6 money to be raised at the party, we will make a  
7 commitment and try to have a candidate personally  
8 there at the function.

9 Q. What was deemed a significant amount  
10 in terms of what they were expected to raise?

11 A. I think we are talking about something  
12 in the 5,000 to \$10,000 range for these kind of  
13 events. Sometimes the politics of it would  
14 become as important or more important than the  
15 money, so for example, if somebody in a  
16 particular area you know could invite hundreds of  
17 people to their home for barbecue on a weekend,  
18 and only ask ten dollars a person, and that event  
19 would yield \$3200, we would not necessarily say  
20 gee, you didn't meet the threshold of the \$5,000,  
21 so Abrams isn't coming because it's important and  
22 valuable to have events where you can meet  
23 hundreds of people and make a speech and talk to  
24 people and shake hands and discuss the issues in  
25 the campaign and so on.

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Q. Mr. Geto, I direct your attention to Exhibit No. 53 in the blue notebook in front of you. Do you recognize this document?

A. Yes.

Q. What is it?

A. It is a copy of a list that I previously furnished to the Commission of individuals who were on this reach-out list.

Q. What does it read across of the top of the list?

A. On the top of this list it reads give and get list.

Q. Could you explain that term to us?

A. Yeah, that's a fairly common term in political fundraising, and what it refers to is you ask someone to either give themselves a timely contribution, in this case a fairly modest contribution, and/or to get it i.e., raise it from others. So it's sort of a combination.

You call up you know some contact or friend or somebody and say listen I would really like it if you could make a commitment to raise \$5,000 for me.

Now if you feel comfortable or have



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2 the money to give some of that yourself, that  
3 would be great, but to the extent that you get it  
4 by reaching out to friends and collection and put  
5 it together that way, that's fine.

6 Q. There are approximately 85 names on  
7 that list. Do each of these names represent an  
8 individual who actually hosted an event for the  
9 '86 race?

10 A. No.

11 Q. What do the names on the list  
12 represent?

13 A. Represent people who we asked to host  
14 an event or raise money. I believe, I mean we  
15 could subsequently furnish to you a more accurate  
16 readout on this, but I have a clear impression  
17 that a number of these people did not come  
18 through and that's fine.

19 We asked them, we really appreciate it  
20 if you could do it, some have the time,  
21 motivation, inclination obviously did not because  
22 it did not result in any funds for the campaign.

23 Q. Could you estimate how many of these  
24 events actually took place for the '86 campaign?

25 A. Well I would just estimate that, I

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2 don't know, maybe if this is a list of 85 names,  
3 maybe this is a quick guess, but maybe 20, 25 of  
4 these people may not have actually been  
5 successful in raising money.

6

Q. So let's say that maybe perhaps 60  
7 events took place. Did Mr. Abrams appear at each  
8 of these events?

9

A. I think that he appeared at almost all  
10 the events. I think there were very few where we  
11 had an organized event that was planned and  
12 scheduled that he failed to attend. That may  
13 have happened on a few occasions due to  
14 scheduling conflicts, that would be the only  
15 reason.

16

Q. As you know, we spoke to Laura Ross,  
17 who is also involved in the campaign effort, on  
18 what actually organized these events as she told  
19 us, and she informed us that Mr. Abrams himself  
20 was the individual who personally contacted the  
21 names on that list to ask them to host events.  
22 Is that your understanding?

23

A. I don't think I had that -- I don't  
24 recall him particularly calling all of these  
25 individuals on a personal basis, that very well

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2 may have happened. I don't doubt it or question  
3 that. I think Laura would have accurate  
4 information and if that's the way she  
5 characterized it, that's probably the way it  
6 happened.

7 Q. Mr. Geto, Mr. Abrams' filings also  
8 reflect he raised a significant amount of money,  
9 approximately 11 percent according to our  
10 calculations from labor unions, and that he had  
11 mentioned them before?

12 A. Right.

13 Q. Were they what you would term  
14 ideological contributors?

15 A. Yeah, I would say, try to give you a  
16 quick overview of that. Many unions have  
17 supported Abrams since he served in the State  
18 legislature in the 1960s and which is also the  
19 same time he was battling the Democratic machine  
20 in Bronx County, and some unions came on board  
21 with him at that time because they were  
22 supporting the reform movement.

23 That goes back more than two decades.  
24 I would say that union support for Mr. Abrams is  
25 based to a certain extent or certain large extent

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on certain ideological grounds, certain unions  
tend more to direct contributions.

He is tuned in and an advocate of the  
concerns of working men and women, and for  
example, I just give you two examples. There was  
a major labor rally in opposition to Robert  
Bork's appointment to the Supreme Court, Bob  
Abrams was the keynote speaker, as the Attorney  
General of the State of New York he had expertise  
and standing and credibility to talk about Bork's  
record and why he felt Bob Bork is a bad Justice  
for the Court.

I think these kind of things, events  
goes on about labor all the time. Abrams also as  
Attorney General has championed issues such as  
safety of the work place, especially as regards  
warning employees of hazardous environmental  
conditions and materials.

And he has vigorously brought  
employers who place workers' health in peril as a  
leading consumer advocate. He is popular with  
workers in their capacity as consumers.

So I would say for all these kind of  
reasons he enjoys strong labor support.

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Q. But these funds are solicited from the unions, they don't come in without solicitation, do they?

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A. In most cases, no. Once in a while you will get people sending in a check and saying here is a check, but basically they are solicited.

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Q. Do you hold events the way you do for the smaller contributors?

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A. No, the unions, essentially the way we raise money from unions was essentially by direct mail. I don't mean a mass mailing, I am targeting individual listed personal listed letters.

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One has a book that lists all unions, we send out a letter to most of the labor leaders in the New York metropolitan area, and so forth. Many of whom again as I said before have been supporting Bob Abrams for many years, many of whom take active roles in his campaign in a fundraising role, and I spoke to some of the labor leaders, directing I think in all causes we send letters saying he is running for reelection, we want your support, hope you will still be on

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board, so on.

In many instances I would personally follow up and talk to some labor leaders, a number of whom are my friends and Bob Abrams' friend.

Q. Would you suggest that they contribute a certain amount in these letters or in conversations?

A. I don't think we ever established a particular fixed amount that we were looking for from labor union per se. It might be, for example, that a particular union gave a certain amount in the previous campaign, we might say gee, we hope you will give at least as much as you gave last time, or if you could give a little more because of inflation, that would be great.

Q. You mentioned earlier that you acted as Mr. Abrams' treasurer for Citizens For Abrams Committee. That was Mr. Abrams' only committee for the 1966 race?

A. Yes.

Q. Could you just describe briefly your role as treasurer?

A. My role as treasurer really was a

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2 technical and a legal one, in the sense that when  
3 the campaign staff would prepare his filings for  
4 the Board of Elections, I would look them over,  
5 and then I would sign off on them, and sign my  
6 name to them as treasurer which is required I  
7 think with the board filings.

8

But that's really the extent of it.

9

Q. Did you also in the first instance  
10 receive the contribution checks?

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A. The contribution checks in the first  
12 instance came to -- well may have come to the  
13 campaign -- I think they did come to our office  
14 actually. I did get them, I mean my office did  
15 handle the deposits.

16

So I mean the checks, maybe some of  
17 them went to the campaign headquarters, but they  
18 were forwarded to our office and/or they came  
19 directly to our office so I would see them as  
20 they came in.

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Q. Now you mentioned that it was staff  
22 people, I believe, who filled out the actual  
23 disclosure forms.

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A. Right.

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Q. Did you or did anyone monitor the

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2 contributions for possible infractions or  
3 violations of the election law?

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A. Yeah. Well, first of all, we did  
5 advise the staff people sort at a clerical level  
6 who were just doing the intake and doing the  
7 register and keeping the records of you know the  
8 basic parameters of law, what the contribution  
9 limits were on individuals, on corporations, et  
10 cetera.

11

Q. Did you inform them about an aggregate  
12 limit on contributions that a corporation under  
13 the law is only allowed to give \$5,000 for  
14 political purposes during a year?

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A. Yes.

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Q. Was there any way that you would  
17 possibly know whether an individual corporaiton  
18 was exceeding the limits?

19

A. What you have on form, as you know,  
20 and I think it was also on the form in 1986 is  
21 that there is a column where you check off for a  
22 corporation if it gave previously, so we would  
23 try to see, we would, you know, we had a file of  
24 all the disclosure forms and filings, and I think  
25 we had a system that essentially the answer to



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2 your question is yes, that attempted to monitor  
3 so they would, you know, not take a contribution  
4 that exceeded the \$5,000 limit.

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Q. If I understand you, you're talking  
6 about corporate contributions to Abrams' campaign  
7 alone. The Election Law speaks in terms of  
8 corporate contributions in the aggregate from a  
9 corporation, so that, for instance, a corporation  
10 shouldn't spend more than \$5,000 in a number of  
11 races?

12

A. No. We did not do -- what we did is  
13 we advised contributors who are making  
14 corporation contributions I think pretty  
15 routinely, particularly when we got a \$5,000  
16 contribution, of the law that speaks to the point  
17 you're raising about aggregate limits.

18

However, we did not undertake to then  
19 check all other campaigns to see, in fact I think  
20 that would be impossible.

21

Q. But you're saying you did advise  
22 contributors about that portion of the election  
23 law?

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A. I think my best recollection, I  
25 remember personally advising many people on

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2 that. Sometimes it was in response to  
3 inquiries. Sometimes we did send out some memos  
4 to contributors advising them of what the limits  
5 were.

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I remember authoring several memos  
7 along those lines. If you asked me did we  
8 absolutely universally blanket cover everybody  
9 with that kind of advice, probably not. But I  
10 think we did it fairly broadly, and particularly  
11 if we got a contribution that was at the \$5,000  
12 level.

13

Q. Mr. Geto, how is this information  
14 recorded in the campaign office, I mean what kind  
15 of records are kept of contributions?

16

A. Okay, well, first of all, we had two  
17 basic systems, one was an internal part of the  
18 fundraising operation where we had things like  
19 index cards and so on where we kept track of  
20 contributions from people who we had solicited  
21 and contributions that came in.

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Then we had an index card system for  
23 all contributions plus of course we kept them in  
24 pencil on the Board of Elections forms just to  
25 track them as they came in, and then ultimately

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2 we would, you know, when we had to do a filing,  
3 we would go over all that stuff and doublecheck  
4 and make sure we had things accurate and so  
5 forth.

6 So we tracked it both on Board of  
7 Elections form and on internal fundraising cards.

8 Q. But nothing was computerized in terms  
9 of the individual limits?

10 A. I don't believe so. I don't think we  
11 had that kind of a capacity in the '86 campaign.

12 Q. Mr. Geto, I direct your attention to  
13 Exhibit No. 54 in the blue notebook.

14 Q. Mr. Geto, you have Exhibit 54 in front  
15 of you?

16 A. Yes.

17 Q. What's that, please?

18 A. This exhibit is a Xerox copy of a  
19 slip, an original of which I hold in my hand,  
20 which is sent out with all letters of  
21 acknowledgment and thanks for contributions to  
22 the Abrams campaign.

23 Q. Could you read it for the benefit of  
24 the record, please?

25 A. Sure. In the slip says the campaign

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2 committee has adopted a policy that I will not  
3 accept any contributions from individuals who are  
4 sponsors of co-op or condominium plans in the New  
5 York State Department of Law, or from employees  
6 of the Department of Law or their spouses. If  
7 these policies may affect your contribution  
8 please contact the committee at 212-686-4551.

9

Q. Mr. Geto, is there any policy  
10 regarding contributions from sponsors' attorneys?

11

A. No. I think it refers to sponsors,  
12 principals of sponsors.

13

Q. Now, aside from staff members and  
14 their spouses, the policy refers only to sponsors  
15 or principals of co-op or condo plans that are in  
16 the Department of Law.

17

A. Right.

18

Q. Is that another way of saying pending  
19 plans?

20

A. Yes. Pending acceptance for filing  
21 with the Department of Law.

22

Q. So is it then possible that the  
23 committee would accept contributions from a  
24 sponsor of a condo or a co-op conversion the day  
25 after the plan leaves the Attorney General's

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2 Office?

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4 A. That is possible. And I hope you're  
5 going to give me an opportunity to comment on  
6 that.

7

8 Q. Why don't you, briefly.

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10 A. First of all, this is a self-imposed  
11 restriction that Attorney General Abrams has  
12 adopted as a blanket uniform policy. I know of  
13 no other comparable restriction adopted by any  
14 other candidate in any other part of this nature,  
15 and the reason for the rationale for it is that  
16 we seek and he seeks, and campaign committee  
17 seeks to avoid appearances of conflicts of  
18 interest, that we feel, felt that because  
19 sometimes conflicts or confrontations between  
20 sponsors and tenants or prospective purchasers in  
21 co-op and condo conversions sometimes get  
22 contentious, that it might lend itself to people  
23 saying gee, well, how could you be impartial,  
24 even though the attorney general goes to the  
25 personal rule on this to see this stuff his way.  
But how can the agency be impartial if you're  
taking campaign contributions from people who  
have a stake in the process. Let me just say

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2 that that is not the only exclusion we make, and  
3 I don't know if you're going to ask me about  
4 that.

5 Q. I will give you an opportunity in a  
6 moment.

7 A. I just want to say this one thing very  
8 quickly, about your question about well would you  
9 take a contribution the day after a plan is  
10 accepted. First of all, we didn't have to bar  
11 them during the time the plan is pending for  
12 acceptance. Bob Abrams could do what other  
13 attorneys general have done and what a lot of  
14 other governmental officials do, which is not to  
15 exclude any category of contribution while a  
16 matter is pending in his agency.

17 He has imposed this restriction, and  
18 sometimes by the way these plans are pending for  
19 a long time and there may be a long window where  
20 he is barring himself, a totally self-imposed  
21 limitation, from taking such a contribution.

22 Q. Mr. Geto, the policy depends upon the  
23 contributor contacting the Attorney General's  
24 Office; is that correct?

25 A. That's correct.

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Q. So then, really the policy relies on the contributors to police themselves?

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A. In this case, that is essentially correct. I mean, it may be that once in awhile there is some reason why the campaign committee might know of a particular situation, but as you can imagine, we have had thousands of co-op conversions over the last decade, and I think it would be impossible, I mean, the only way to do it -- the only way for the candidate, in this case the Attorney General, to know this for himself, would be to utilize the personnel and materials and information in his government agency to screen contributions. We felt that would be an infringement from a variety of points of view, of using governmental resources time and personnel to get involved in effect in an aspect of political fundraising, and would be an inappropriate infringement for other reasons.

So we do rely on people to flag this for us, and we do ask them to do it. And we absolutely refund contributions the moment that anyone says yes they have some matter of this nature pending in the office.

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Q. Do you have any other mechanisms in place in terms of conflicts? Specifically I am referring to the committee that you had mentioned that reviews contributions?

A. Yes.

Q. And that's a committee chaired by Nick Scopetta; is that correct?

A. That's correct.

Q. And how long has that committee been in place?

A. That committee has been in place at least back through the '82 campaign, might have been even earlier than that, but it's been in effect for many years. It's three persons consisting of Nicholas Scopetta, Adrienne Dawind, and Alex Forger.

These were three individuals of we felt high reputation and integrity, who Attorney General Abrams personally asked, again, this is a self-imposed mechanism, which the Attorney General of course was under no obligation to do, but he asked for these three individuals to constitute a committee to which the campaign committee would refer questions when we had



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2 questions arise during the course of campaign  
3 fundraising that we felt gave the race the  
4 appearance of a conflict.

5

6 Obviously if we thought there was a  
conflict we would take the appropriate steps.

7

8 Q. But again, Mr. Geto, this whole  
9 process relies upon your somehow being notified  
10 of a problematic contribution. I mean, since you  
11 don't use the Attorney General's facilities to to  
12 check to see whether there is any conflict it's a  
question of hearing about it how?

13

14 A. Well, there are two ways of hearing  
15 about it. Sometimes we refer matters this  
16 committee on our own or reject a contribution  
17 based on something that is brought to our  
18 attention in the news media, which is often the  
19 case of when you find out about conflicts. Or we  
20 might know directly or I might know directly what  
I perceive to be a conflict situation.

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22 For example, we received a check from  
23 the official Brooklyn Democratic Campaign  
24 Committee of the Brooklyn Democratic  
25 Organization, I think it was in the '86 campaign,  
maybe it was the '82 campaign at a time when

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2 Attorney General Abrams was prosecuting the then  
3 county chairman, Meade Esposito, for a what  
4 Abrams contended and the Attorney General was  
5 contending was an infraction of State law.

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When I received that check I sent it  
7 back; I said that I felt it would raise the  
8 appearance of a conflict. So some of it would be  
9 self-generated, something I would have had  
10 brought to our attention by the news media or  
11 others.

12

Q. But it's fair to say then that it's  
13 really most notorious cases that these  
14 contributions get transferred to the committee?

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A. You mean get referred to this  
16 committee?

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Q. Right.

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A. That is by and large the case, yes.

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MS. SHANUS: Thank you very much; I  
20 have no more questions.

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CHAIRMAN FEERICK: I would ask the  
22 witness if there are any additional conflict kind  
23 of guidelines that you recall being used, if you  
24 could just provide us with that information after  
25 this hearing today.

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THE WITNESS: It would be my  
pleasure.

CHAIRMAN FEERICK: Commissioner Emery.

MR. EMERY: I am going to be brief,  
Mr. Geto. I want to explore a little bit your  
role not only as campaign manager, but as the  
head of the PR firm essentially. You are the  
head of a PR firm; is that correct?

THE WITNESS: I am the sole head of  
the PR firm. I am an equal owner and partner of  
a PR firm with another individual, yes.

MR. EMERY: I take it that capacity  
you represent private clients to retain you to  
help them with their public relations?

THE WITNESS: That is correct.

MR. EMERY: And advise them on media  
contacts, newspaper contacts and community  
contacts; is that correct?

THE WITNESS: Yes.

MR. EMERY: I take it that in your  
capacity as a campaign manager, have you ever  
managed other campaigns besides Bob Abrams'  
campaign?

THE WITNESS: Many.

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MR. EMERY: In your capacity as a campaign manager, you at least feel some substantial responsibility for raising money for that campaign?

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THE WITNESS: Yes. I mean it's not a central part of my role, but I am -- I have some responsibility in that direction, yes.

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MR. EMERY: Well, you have overall responsibility in that direction if you are the manager of the campaign?

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THE WITNESS: Yes, in that sense, yes.

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MR. EMERY: And do you ever approach your clients with respect to solicitations for the campaigns that you're handling, your PR clients, that is?

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THE WITNESS: Yeah. I don't think so. I think I am thinking specifically of Abrams' campaign. Some of my clients have been long time contributors to Bob Abrams. They were not brought on board by me. The clients, my clients were contributors to Bob Abrams to the very best of my knowledge, predated I think, the formation of my firm. I don't think I brought aboard any of my clients as major contributors to

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Bob Abrams or other campaigns that had not had previous associations as contributors.

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MR. EMERY: Really, what I am trying to find out is how you feel about that. What does it concern you as a person who runs a PR firm and as a person who runs campaigns that you have a special relationship with your own clients, PR may be enhanced in some sense by giving to campaigns, or there are certain people who you campaign as part of their public relations in an overall sense, expanses and costs of doing business and the like in this City and others.

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18

Do you see a conflict of interest in your position as a head of a PR firm, raising money from your clients for the people that you support as a campaign manager?

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THE WITNESS: Well, I already told you that to the best of my --

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22

MR. EMERY: I am not suggesting you did it, I am talking in the abstract I am not --

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THE WITNESS: No, I don't see a theoretical conflict of interest. In other words, if you had an ongoing, as I do, public

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relations business and had clients whom I serve on who retain me to meet their needs.

BY MR. EMERY:

Q. And you're advising them with respect to how best to enhance their public relations.

A. Yeah. Okay.

Q. And you are retained campaign manager for a campaign?

A. Yes.

Q. Is it a conflict of interest in your mind to go and solicit campaign contributions?

A. No, I don't think. I mean if I did that I would be able to say to the client I am managing so and so's campaign, I wouldn't pretend that I had no participation in the campaign. You believe I would be up front, look, as you know, I am managing Candidate X's campaign and gee, I really appreciate it if you would make a contribution to that campaign.

They are going to tell me yes or no, and/or they're going to say -- my answer is I don't understand what the conflict is that you're perceiving.

Q. How would you feel if you were the

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person who was your client?

A. If I am the client, right?

Q. Yes, let's say you were Barney's, you're Mr. Pressman, who is going to testify here later. Mr. Pressman is having lot of troubles in the communities getting the zoning change, because he needs it for his business, and he thinks it's also probably good for the community, he believes.

And he comes to you because he is in terrible shape, the community is up in arms, they are marching around his store and all kinds of other things, I don't know if that's case but I am making up the scenario, and you are retained by him and you say there are a number of things we could do, and you do a whole range of things for him, and you're becoming successful at changing the climate in which he is seeking his zoning change.

And one of the things you tell him to do or you advise him to do that would be good as part of an overall scheme of public relations is to make certain campaign contributions to certain officials as part of good government, as part of

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2 a good approach towards dealing with your  
3 community and your City, is that fair to say, you  
4 could do something like that, wouldn't you?

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A. I don't know that I would say it in  
6 the way that you characterize it. I don't know  
7 whether I would do it as part of a public  
8 relations campaign, you know.

9

Q. In what capacity would you ask him to  
10 make contributions to various public officials?

11

A. I probably wouldn't ask him to do it.  
12 He might ask me for my advice and counsel as to  
13 making campaign contributions. I happen  
14 personally to be a big believer that people who  
15 do business in this city, as well as people who  
16 live in this city, if they have wherewithal, and  
17 you can also make very small contributions that  
18 are appreciated, I believe that people should  
19 make campaign contributions as part of their  
20 civic responsibility.

21

Q. But now put yourself in this position  
22 in this situation, where he has come to you, you  
23 seem to be doing a great deal good for his  
24 immediate goals in his business, and you tell him  
25 that you're the campaign manager for X, Y or Z



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campaign, and you would like him to make a contribution to that campaign as part -- well, in what role, I mean if you asked him that what role would you be saying it in and how would he perceive that?

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A. I guess, Mr. Emery, it depends on how would do it in a specific instance. I cannot make a generalization there. I suppose if you're suggesting that someone who is both a public relations person for a business person, and a campaign manager, could conceivably go to the client, i.e., the first person, and say to that -- and somehow pressure that client to give money to a candidate who is another client's person, I mean I don't really see the leverage of what you're talking about because frankly if you're asking me to theoretically or hypothetically put myself in that place, I would be damn hard pressed to go to my client and start strong arming my client to do something because he will turn around and boot me out the door.

So I don't understand what you're postulating, really.

Q. Add this factor to it. Add the factor

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2 that you need an approval from some specific  
3 agency, such as the Board of Estimate, and that  
4 in your estimate as Board of Estimate for the  
5 client who needs your approval, you are the  
6 person who is going to talk and make contact with  
7 the officials on the Board of Estimate, and  
8 you're the one who is going to try to convince  
9 them of the merits of your client's position.

10 Are you telling me that it would not  
11 be helpful to have advised your client prior to  
12 that to have made campaign contributions to those  
13 various members of the Board of Estimate?

14 A. First of all, you mixed up two things  
15 in my mind. First of all, you put it in the  
16 framework of me being the campaign manager, for  
17 example for a member of the Board of Estimate,  
18 which is not to the case.

19 Q. I am not in this area of public  
20 relations and of the person who also raised money  
21 or been part of the process of raising money for  
22 candidates. And combining the two functions in  
23 some sense in one career.

24 And what I am asking you is, if you  
25 add to those two functions in that one career,

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2 the process essentially of a lobbyist to the  
3 client of yours who is a businessman or business  
4 entity, and you're going to make contact with  
5 particular public officials, and you have advised  
6 this person to make contributions to those  
7 officials, don't you think that there is a  
8 substantial amount of influence, especially if  
9 you have been in a position of raising funds for  
10 those officials in the past or during that  
11 campaign?

12 A. No. First of all, you injected a  
13 hypothetical that I tried to convey to you is not  
14 the case. In other words, you're saying in my  
15 capacity as a public relations person and as  
16 campaign manager.

17 Q. As a fundraiser?

18 A. As a fundraiser, and a campaign  
19 manager, and then mixing that in with work I may  
20 have done as a lobbyist, and I am saying those  
21 are completely separate in my mind and in my  
22 work. In other words, I am not raising money. I  
23 answered your first question I do not raise money  
24 from candidates that I manage, nor from the Board  
25 of Estimate nor did I ask any client of mine to

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2 give money to a candidate or a member of the  
3 Board of Estimate who is my client.

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5 So you postulated something that is  
6 not what I have been involved in and then when  
7 you asked me to answer it theoretically, all I  
8 can say I suppose it depends on how it's done in  
9 the situation. I see it as more the other way  
10 around. Of being very thepidatcous, if you ask  
11 me how I would feel about it, if I was managing a  
12 candidate who also might be the subject of  
13 lobbying that I was doing which is not the case,  
14 and raising money from a client of mine for that  
15 candidate, I suppose you could get into a  
16 conflict there, depending on how you approached  
17 it.

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18 Q. No matter how you approached it, it  
19 would be very hard to avoid a conflicts  
20 situation, wouldn't it?

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21 A. I don't think so, because I think the  
22 reality, if you really put yourself in that  
23 situation, you're still going to your client, and  
24 I assume you are advising your client on the  
25 basis of what is in your client's best interest.

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I think the only time there would be a

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2 conflict in the framework that you have created,  
3 the only time there would be a conflict in my  
4 mind would be if you're going to a client and it  
5 wasn't in your client's best interest, and you  
6 were lying to your client, and then saying  
7 because you are trying to raise money  
8 disingenuously for a subject because of lobbying,  
9 if it was in your client's interest you would do  
10 it whether your relationship as the candidate or  
11 official or not, so I don't see it as conflict.

12 CHAIRMAN FEERICK: Thank you very  
13 much. We are going to have one more witness and  
14 then we will take a break for lunch. Those  
15 interested, the luncheon break will be very  
16 short. Call Richard Gordon.

17 CHAIRMAN FEERICK: The Commission  
18 calls Richard Gordon.

19 R I C H A R D G O R D O N,

20 having been first duly sworn by The  
21 Chairman, was examined and testified as  
22 follows:

23 CHAIRMAN FEERICK: Mr. Gordon, would  
24 you identify the person who is seated next to  
25 you.